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Rights of Students in Public Schools

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by Rita Kaufman

Introduction

It can safely be said that the rights of public school students hang in a balance. The two sides of this balance are the responsibilities of school officials to educate and to maintain a safe, disciplined environment and the constitutional guarantees in the Bill of Rights possessed by the students. The past four terms of the United States Supreme Court have produced three cases which address this balance.[1]

The constitutional guarantees of public school students addressed in these recent cases and in this article concern the first and fourth amendments. As to the fourth amendment, the Supreme Court in *New Jersey v. T.L.O.*[2] adopted a reasonable search standard lower than probable cause. The Court adopted a two-fold reasonableness inquiry to determine the constitutionality of the searches: (1) was the action justified at its inception, and (2) was the search reasonably related in scope to the circumstances that justified the search?[3]

As to the first amendment, the concern has been whether the activity of the student has a disruptive effect on the educational process and whether there was a substantial and reasonable basis for the school's response to the questionable action of the student. In *Hazelwood School Dist. v. Kuhlmeier*,[4] the Court held that "educators do not offend the first amendment so long as their actions are *reasonably* related to legitimate pedagogical concerns."[5] The Court, in *Bethel School Dist. v. Fraser*,[6] held that a student's delivery of a sexually offensive and disruptive speech at a school assembly was not protected by the first amendment, reasoning that the speech had disrupted the educational process and that the school officials' interest outweighed that of the student.[7]

The reasonableness standard applied in fourth amendment school cases is essentially the same as the reasonable basis standard applied in first amendment school cases. Both standards focus upon a factual totality of the circumstances, with emphasis upon the special characteristics of the school environment and the importance of maintaining that environment.

Under the reasonableness standards, school authorities have broad power to curtail student activities in order to maintain the school environment. School authorities frequently are able to justify their actions as reasonable in light of the concerns and public policy surrounding certain issues in schooling, i.e., discipline, drugs, violence, etc. This author believes that the judicial system should not allow these concerns to eliminate or reduce student rights.

Maryland has recently addressed the question of student's rights versus the school authorities in two of its localities: Baltimore City and Prince George's County. In Baltimore City, a task force was appointed in October, 1988, by Dr. Richard C. Hunter, superintendent of public schools, to study school violence. On November 17, 1988, the task force made the following recommendation to the superintendent:

1. Hiring additional school police, based on an assessment of need, who will wear uniforms but remain unarmed.
2. Establishing a highly publicized hot line for tips on problems.
3. Buying hand-held metal detectors.
4. Installing a camera monitoring system with an intercom in large schools.
5. Encouraging uniforms in elementary schools and dress codes, developed by students, parents and administrators, for the higher grades.
6. Appointing a community group to oversee how safety procedures are put into effect in the schools and student-parent groups in each school to resolve safety issues.
7. Promoting parent involvement by providing programs to assist parents dealing with their children and setting up rooms in schools where parents could gather to discuss problems.[8]

These recommendations were adopted on December 1, 1988. It is interesting to note that "[t]he legal aspects of such moves were not discussed [at the school board meeting]".[9] This is one example of the scale tipping in favor of the school authorities.

Another recent example deals with Eleanor Roosevelt High School in Greenbelt, Maryland. The school recently hired a new principal. The situation at Roosevelt is much the same as the situation was at the Hazelwood school (see *infra*). Roosevelt's principal had edited articles and advertisements out of the school newspaper. This action made students angry and the faculty sponsor/advisor of the paper quit. *Hazelwood*, however, is the law and the Supreme Court has recognized the school authorities' right to edit the newspaper.

This article traces the history of student

rights. It begins with cases which first recognized the constitutional rights of juveniles, inside and outside of the school environment. Then, the article explores and compares the recent decisions of the Supreme Court concerning first and fourth amendments in the school environment. This analysis leads to the author's conclusion that the Court is moving away from the belief that students do not shed their constitutional rights at the school house gate.[10] If this line of reasoning continues, public school officials in the future may be able to justify as reasonable the vast majority of their actions against students. If so, students will not be protected to the same degree as adults by the same Bill of Rights. Justice Stewart expressed such a view in *Tinker v. Des Moines School Dist.*, saying, "I cannot share the Court's uncritical assumption that rights of children are co-extensive with those of adults."[11] It appears that the present Supreme Court shares Justice Stewart's view.

I. History of Student Rights

In response to the malfunctioning juvenile justice system, the Supreme Court decided a number of cases in the 1960's and the 1970's which acknowledged the applicability of certain constitutional rights to juveniles. In *Kent v. United States*,[12] the Supreme Court applied the fourteenth amendment due process clause and the sixth amendment right to counsel to juvenile criminal proceedings. *Kent* held that a waiver order from Juvenile Court to the District Court would only be valid if (1) a hearing had been held in the juvenile court; (2) counsel for the juvenile had access to the records from which the waiver decision was made; and (3) the juvenile court had accompanied its waiver order with a statement of the reasons for its decision.[13]

A landmark case which recognized that juveniles have constitutional rights equal to those of their adult counterparts is *In re Gault*.[14] The Supreme Court altered the juvenile adjudicatory process holding that fundamental fairness requires that due process rights be afforded to juveniles. The Court held that a juvenile at the adjudicatory state has the same rights as an adult on trial. These rights are: (1) notice of the charges against him; (2) notice of the right to counsel; (3) the right of confrontation and cross-examination; and (4) the right against compelled self-incrimination. "Neither the fourteenth amendment nor the Bill of Rights is for adults alone."[15]

In *In re Winship*,[16] the Court announced the standard of proof needed when a juvenile is charged with an act that would constitute a crime if committed by an adult. The Court held that the applicable standard of proof is beyond a reasonable doubt as required by the due process clause of the fourteenth amendment.[17]

Kent, *Gault*, and *Winship* require that states afford the same constitutional safeguards to a juvenile that are mandated for an adult. Thus, the rights of juveniles appear to be coextensive with the rights of adults during the adjudicatory stages.

The constitutional rights of students in the school context were recognized by the Court over forty years ago.[18] In 1942, the West Virginia Board of Education passed a resolution requiring teachers and students to salute the flag. "Refusal to salute the flag [was] regarded as an act of insubordination, and ... dealt with accordingly."[19] The Court held that it was a violation of the first amendment for a state to make it compulsory for children to pledge allegiance to the flag.[20] The Court reasoned that "[t]he fourteenth amendment ... protects the citizen against the State and all of its creatures, Boards of Education not excepted. These have ... important ... and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights."[21]

"Neither the fourteenth amendment nor the Bill of Rights is for adults alone."

In 1968, *Tinker v. Des Moines School Dist.*[22] provided student rights advocates with their last big victory. In the context of the first amendment, the Court stated: "School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect ...."[23] The first amendment expression in *Tinker* was the wearing of black armbands to school to protest the United States involvement in Vietnam. The principals of the Des Moines school district learned of the plan and established a rule prohibiting such conduct. Students who wore the bands were suspended from school until they returned without them. Other items, however, such as the iron cross Nazi symbol, were not banned.

The Court noted that the wearing of the armbands was a quiet, passive, nondisruptive act that neither infringed on the rights of other students nor materially and substantially interfered with the educational process.[24] Even when "applied in light of the special characteristics of the school environment," first amendment rights are available to students.[25] The Court stated:

> A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others.[26]

The common bond in the foregoing cases is the overall awareness of the Bill of Rights application to students, even with frequent reference to the special nature of schools. Today, twenty years later, schools face many of the same problems. They also face new, or at least greatly increased, problems in the nature of drugs, weapons and teenage pregnancy. These new elements in the schools have caused legitimate apprehension. The question of whether a student's actions materially and substantially interfere is overshadowed by the drive to rid the schools of these problems. The Bill of Rights requirements are becoming less stringent when applied to students. With the standards for compliance relaxed, are the rights of students being jeopardized? Are fear and public outcry molding new standards for the school environment? The three recent Supreme Court cases seem to suggest that the standard applied to students is a lesser standard than that applied to adults.

II. Fourth Amendment Searches

> The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.[27]

Prior to 1985, lower courts had addressed the fourth amendment's application to school searches. In *Horton v. Goose Creek Indep. School Dist.*,[28] the Fifth Circuit held

that dog sniffing searches of the entire student body violated the fourth amendment. The court acknowledged that the fourth amendment's basic concern is reasonableness and that this reasonableness depends on the circumstances of each case. The court recognized that reasonable cause is the usual standard applied when action must be taken to maintain a safe environment conducive to education. The court pointed out, however, that "[t]he Constitution does not permit good intentions to justify objectively outrageous intrusions on student privacy."[29] The court concluded that dog sniffing constituted a search under the fourth amendment and that individualized suspicion would be required in order for the search to be constitutional. In 1984, the Sixth Circuit held that the fourth amendment required a school official to have reasonable cause to conduct a search.[30] The court noted "that not only must there be a reasonable ground to search, the search itself must be reasonable."[31]

In 1985, the United States Supreme Court decided *New Jersey v. T.L.O.*,[32] a landmark case in the area of searches in the school environment. In *T.L.O.*, a teacher observed two female students smoking in the bathroom. Because the bathroom was not a designated smoking area, the students (one was the defendant, T.L.O.) were brought to the vice-principal. When T.L.O. denied smoking, the vice-principal took her into an office and asked to see her purse. Upon opening it, he discovered a pack of cigarettes, rolling papers, marijuana, a pipe, a substantial amount of money in one dollar bills, an index card of I.O.U.'s, and two letters implicating T.L.O. in marijuana dealing. Delinquency charges were subsequently brought against T.L.O.

At the time of the search in *T.L.O.*, there were three possible theories on which to justify a student search: *in loco parentis*; fourth amendment probable cause; and fourth amendment reasonable suspicion. The New Jersey Supreme Court applied the *in loco parentis* theory, which means that school officials, in dealing with their students, obtain their authority from the parents. The New Jersey court held that the fourth amendment applies, but that the doctrine of *in loco parentis* lowers the standard used in determining the reasonableness of the search. The interests the court considered in lowering the standard were the educational atmosphere, the reasonable expectations of the students, and the realities of the classroom environment. The state court considered the following factors in determining the sufficiency of the cause to search: (1) age and school record of the individual; (2) prevalence and seriousness of the problem in the school; (3) exigency of the situation; (4) probative value and reliability of information justifying the search; and (5) the teacher's prior experience with the student.

The United States Supreme Court rejected the *in loco parentis* standard and its notion of parental authority. The Court noted that public school authorities are state actors for purposes of the constitutional guarantees of freedom of expression[33] and due process,[34] and that it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students.[35]

The Court, however, also rejected application of the mandates of probable cause under the fourth amendment. The Court stated that the student's interest in privacy must be balanced against the school's interest in maintaining discipline and a safe environment and that "this balancing requires some easing of the restrictions to which searches by public authorities are ordinarily subject."[36] The fourth amendment requires a warrant and probable cause. The Court opined that the warrant requirement is unsuited to the school environment because such a requirement would interfere with the maintenance of discipline,[37] and that probable cause is not an irreducible requirement.[38] "The fundamental command of the fourth amendment is that searches and seizures be reasonable."[39]

"The Court, . . . rejected application of the mandates of probable cause . . ."

The Court in *T.L.O.* adopted the third theory for justifying school searches, that of fourth amendment reasonable suspicion. The Court then applied, for the first time in the context of a school search, its *Terry v. Ohio*[40] two-prong test for reasonableness. This dual fourth amendment reasonableness test was first used in *Terry* to allow police officers to intrude upon an individual's fourth amendment interest without a warrant or probable cause, but based on a reasonable suspicion.[41] Specifically, the two-prong inquiry under the test is "whether the...action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place."[42]

In applying the two-prong reasonableness test to school search situations, this broad authority to search could be used whenever there is an alleged violation of a rule of the school, or whenever there is interference with school discipline and order. The search, however, must still be reasonable in light of the particular violation. The Court opined that the opening of the purse was justified based on the teacher's observations of the two students smoking. One commentator, critical of *T.L.O.*'s holding, expressed the view that the discovery of the cigarettes answered the vice-principal's question and thus the search should have ended at that point. In addition, "the school official did not have probable cause to conduct the search since neither possession of cigarettes nor lying about one's smoking habits is relevant to whether a student has been smoking in a non-designated area in the school."[43] The Court, however, did not consider this factor but merely applied the two-prong test, answering both questions affirmatively. "The reasonableness standard *should ensure* that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools."[44] No safeguards, however, are set forth in the standard to accompany this assurance. The interests of the students, in effect, are left in the hands of school authorities.

T.L.O. leaves the following areas unresolved: the standard to be applied in locker searches[45] or student automobile searches;[46] whether individualized suspicion is required;[47] the permissibility of strip searches;[48] and whether the standard should be different when there is police involvement.[49] Because of the need to maintain order and discipline within the school environment, school authorities may conduct a search, not justified on probable cause but on a lesser, reasonableness standard for children. Hence, in the fourth amendment area, student's rights are not coextensive with those of adults.

In post-*T.L.O.* cases courts have held that reasonable suspicion is the proper standard to determine the validity of a search by a school official. In *Cason v. Cook*,[50] a female high school student challenged a search conducted by the female vice-principal. The search was conducted in the presence of a female police officer who was assigned to the school as a liaison officer. As a result of the search, a stolen coin purse was found. The police officer conducted a pat-

down of Cason only after the stolen coin purse was found. The Eighth Circuit rejected imposing a probable cause warrant requirement. The police liaison did not initiate the search nor question Cason. The school official initiated the investigation, acting upon her own authority, not that of the police. The court held that the correct standard to apply was the standard enunciated in *T.L.O.*

Even in situations in which the school official is acting *in loco parentis*, such as chaperoning a school trip, the courts have relied on the standards enunciated in *T.L.O.* In *Webb v. McCullough*[51], a high school principal searched a student's hotel room during a field trip. The room searched was assigned to Webb and three other female students. The principal had been informed by other chaperones that the students had consumed alcohol and that they had used an unoccupied room adjacent to Webb's room. Although the Sixth Circuit remanded the case to the district court for failure to correctly apply the *T.L.O.* test, the court did note that *T.L.O.* governs searches of students by school officials.

The reasonableness standard announced in *T.L.O.* has consistently withstood challenges of unconstitutionality. Today, the need to maintain a particular school environment outweighs the right of the student to be secure from unreasonable searches. The student thus becomes the victim, learning the lesson of double standards; one for adults and a lesser standard for the student.

III. First Amendment Speech and Expression

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[52]

In 1986, the United States Supreme Court decided *Bethel School Dist. No. 403 v. Fraser*[53]. In *Bethel*, sanctions were imposed against a student for giving an indecent, lewd, and offensive speech. Fraser nominated a fellow student for office during an assembly that was mandatory for the students. His nominating speech was full of sexual metaphors:

> I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most. . .of all, his belief in you, the students of Bethel, is firm.
>
> Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds.
>
> Jeff is a man who will go to the very end—even the climax, for each and every one of you.[54]

The speech evoked the student audience to jeer, hoot, holler, and simulate the acts to which Fraser was alluding. Fraser was found to have violated a school disciplinary rule. He was suspended for three days and his name was removed from the list of candidates for graduation speaker. Fraser, however, only served two of the three suspended days and was the graduation speaker, having been elected as a write-in candidate.

"The reasonableness standard announced in* T.L.O. *has consistently withstood challenges of unconstitutionality."

The Supreme Court upheld the actions by the school. Although school officials do not have limitless discretion to apply their own notions of indecency, the nominating speech was found to be offensive and to have disrupted the educational process of the school.[55] Referring to *T.L.O.*, the Court once again expressed the view that the rights of students in public schools are not "automatically coextensive" with the rights of adults: "It does not follow. . .that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, that same latitude must be permitted to children in a public school."[56] The school board may decide what form of speech is appropriate and the first amendment is not offended if it is found that the speech "would undermine the school's basic educational mission."[57] Fraser's speech disrupted the educational process and therefore no balancing was required.

More recently, in *Hazelwood School Dist. v. Kuhlmeier*,[58] the United States Supreme Court stated that the first amendment rights of students in public schools "are not automatically coextensive with the rights of adults in other settings," and must be "applied in light of the special characteristics of the school environment."[59] *Hazelwood* involved a high school newspaper (the *Spectrum*) and its editorial process. The paper was written by the school's journalism class. The teacher in charge of the class submitted proofs to the principal prior to publication as part of the normal editorial process followed by the school. In its final issue for the school year, two articles disturbed the principal. One dealt with teenage pregnancy and the other addressed divorce. Each page on which these articles appeared was withheld from publication in its entirety. Consequently, six articles were removed from the final issue. The principal believed that this was the only means available to make sure the paper would be published by the end of the school year. The students challenged the principal's action as constituting censorship in violation of their first amendment rights. They also claimed that the *Spectrum* was a public forum. The Supreme Court held that the students' first amendment rights were not violated by the principal's actions.

In 1943, the Court held that "it is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution *only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish.*"[60] In 1966, the Fifth Circuit stated:

> [S]chool officials cannot ignore expressions of feeling with which they do not wish to contend. They cannot infringe on their students' rights to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not *materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.*[61]

Hazelwood moves away from these recognitions. The two newspaper articles presented no clear and present danger to the school nor did they materially and susbstantially interfere with the requirements of appropriate discipline in the operation of the school. Instead, it was merely a situation in which the topics discussed and the manner in which they were presented bothered the principal.

Bethel held "the undoubted freedom to advocate *unpopular and controversial views* in schools and classrooms that must be balanced against the society's counter-

vailing interest in teaching students the boundaries of socially appropriate behavior."[62] Although an argument might be made that teen pregnancy exceeds these boundaries, it should be balanced against the need to make students aware of the risks of engaging in sex. Teen sex is not necessarily advocated by publishing an article on teen pregnancy. The process of balancing first amendment interests against the boundaries of socially appropriate behavior may leave students unprotected, not only when their constitutional rights are concerned, but also when adult decisions are involved.

The Court in *Hazelwood* balanced the student's rights with the countervailing interests and held that the school's action was reasonably related to legitimate concerns and that the school censoring of the articles was done in an editorial role. The Court also rejected the notion that the paper was a public forum.[63] The school newspaper is not a traditional public forum and hence the school need not demonstrate compelling reasons for the removal of the articles. The *Spectrum* was a product of the journalism class.

Hazelwood was also distinguished from the first amendment question addressed in *Tinker*. The Court stated that "the question addressed in *Tinker* is different from the question whether the first amendment requires schools affirmatively to promote particular student speech."[64] *Tinker* dealt with personal expression. *Hazelwood*, however, was concerned with expression which might reasonably be perceived "to bear the imprimatur of the school."[65] Therefore, the Court held that the standard was not the same and "educators do not offend the first amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."[66] This standard is consistent with the view that education is not the responsibility of the courts. The principal was concerned that the teen pregnancy article did not protect the identity of those involved and was inappropriate for younger students. His objection with the divorce article was that it named parents without their consent and did not present their view on the topic. The Court ruled that these shortcomings with the articles justified the principal's actions.

Justice Brennan's dissent characterized the *Spectrum* as a "forum established to give students an opportunity to express their views."[67] He expressed his view that the deleted articles "neither disrupte[d] classwork nor invade[d] the rights of others."[68] The dissent felt the first amendment standard of *Tinker* was relevant to *Hazelwood*. *Tinker* dealt with speech that "materially disrupts." In *Hazelwood*, six articles were deleted, not just the two that disturbed the principal. The dissenters believed that the principal could have removed those two articles only, and characterized the removal of all six as "unthinking contempt for individual rights."[69]

These recent first amendment cases are silencing students' views. To have a controversial opinion and to express it are protected first amendment rights. The recent court opinions indicate that this right is diminishing in the school environment. The standard of "materially and substantially interfere" is both vague and overbroad and allows school authoritites broad discretionary power to curtail speech and ideas of which they disapprove.

Conclusion

These three recent Supreme Court decisions demonstrate the manner in which students' rights are "balanced" against the concerns of schools in maintaining the school environment. This balancing test occurs in both first and fourth amendment areas. Today, schools' interests outweigh the student's rights. No protections are announed in this balancing test for guaranteeing that schools will not overstep their authority. The silence may be partly based on the belief "that the education of the nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges."[70] The focal point of the balancing test is one of fact-bound reasonableness.

Recently, a federal district court in Indiana upheld as reasonable a high school's proposed program for drug testing its athletes.[71] The court relied on *T.L.O.*, noting that the *T.L.O.* decision does not require individualized suspicion. The court held that the random urinalysis testing program "constitutes [a] search that is justified at its inception by [the] school's legitimate need to ensure drug-free athletes and [the testing program] reasonably balances school's needs against students' privacy interests and thus, does not violate the fourth amendment."[72] Because the program had not yet been implemented, the court saw no reason to issue a prior judicial restraint.

"Schools' interests outweigh the student's rights."

A final question is whether the Bill of Rights even protects students. This question is avoided with the answer that students' rights are not coextensive with those of adults.[73] If not coextensive, do these protections exist at all?

The Court seems to be saying that the Bill of Rights does protect students, but the applicable standards in applying the Bill of Rights are less stringent in the first and fourth amendment areas. The reason for the lessening of the standards is the concern and desire to maintain a particular school environment. The school rules and regulations are seen as reasonable means of accomplishing this goal. Although students do not yield their rights, they must forego some of the protection afforded adults by the same rights. As the federal court in Indiana noted:

> Over the course of the last few years, the Supreme Court of the United States has clearly defined the constitutional rights of students in the public school setting, as different than rights enjoyed in other settings. Although it remains true that students do not "shed their constitutional rights to freedom of expression at the schoolhouse gate," that concept has been considerably narrowed and refined by subsequent cases.[74]

If the Supreme Court continues its present course, the concept will become even more narrowed and refined.

NOTES

[1]*New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Bethel School Dist. v. Fraser*, 478 U.S. 675 (1986); *Hazelwood School Dist. v. Kuhlmeier*, ____U.S.____, 108 S. Ct. 562 (1988).
[2]469 U.S. 325 (1985)
[3]*Id.* at 341.
[4]____U.S.____, 108 S. Ct. 562 (1988)
[5]*Id.* at ____, 108 S. Ct. at 571 (emphasis added).
[6]478 U.S. 675 (1986).
[7]*Id.* at 685.
[8]Baltimore Sun, Nov. 18, 1988 at 12F, col. 5.
[9]Baltimore Sun,, Dec. 2, 1988 at 1D, col. 6.
[10]*Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506 (1968).
[11]*Id.* at 515.
[12]383 U.S. 541 (1966)
[13]*Id.* at 557.
[14]387 U.S. 1 (1967)
[15]*Id.* at 13.
[16]397 U.S. 358 (1970).
[17]*Id.* at 368.
[18]*West Virginia State Bd. of Educ. v.*

Barnette, 319 U.S. 624 (1943).
[19]*Id.* at 626.
[20]*Id.* at 642.
[21]*Id.* at 637.
[22]*Tinker*, 393 U.S. 503 (1968).
[23]*Id.* at 511. The Court, however, did not say that a state may not abridge these fundamental rights.
[24]*Id.* at 508-09.
[25]*Id.* at 506.
[26]*Id.* at 512-13 (*citing Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).
[27]U.S. Const. amend. IV. When addressing any search, the following questions must be asked: (1) Is the fourth amendment applicable? (2) If it is applicable, has it been violated? (3) If it is applicable and violated, does the exclusionary rule apply? In the context of searches of public school students, this paper addresses the first two of these questions.
[28]690 F.2d 470 (5th Cir. 1982).
[29]*Id.* at 481.
[30]*Tarter v. Raybuck*, 742 F.2d 977 (6th Cir. 1984).
[31]Id. at 982.
[32]469 U.S. 325 (1985).
[33]*Tinker*, 393 U.S. 503.
[34]*Goss v. Lopez*, 419 U.S. 565 (1975).
[35]*T.L.O.*, 469 U.S. at 336.
[36]*Id.* at 339-40.
[37]*Id.* at 340.
[38]*Id.*
[39]*Id.*
[40]392 U.S. 1 (1968).
[41]Factually, *Terry* was concerned with the legality of a stop and frisk, which resulted in the discovery of concealed weapons.
[42]*T.L.O.*, 469 U.S. at 341 *(quoting Terry v. Ohio*, 392 U.S. at 20).
[43]McDonald, *New Jersey v. T.L.O.—Closing The Schoolhouse Gate on the Fourth Amendment*, 14 N.Y.U. Rev. L. & Soc. Change 455, 467 (1986).
[44]*T.L.O.*, 469 U.S. at 343 (emphasis added).
[45]*State v. Engerud*, 94 N.J. 331, 463 A.2d 934 (1983); *People v. Overton*, 20 N.Y.2d 360, 229 N.E.2d 596, 283 N.Y.S.2d 22 (1967).
[46]*State v. D.T.W.*, 425 So. 2d 1383 (Fla. Dist. Ct. App. 1983).
[47]*Bellnier v. Lund*, 438 F. Supp. 47 (N.D.N.Y 1977).
[48]*Doe v. Renfrow*, 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd*, 631 F.2d 91, (7th Cir. 1980), *reh'g. denied*, 635 F.2d 582 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981).
[49]*Zamora v. Pomeroy*, 639 F.2d 666 (10th Cir. 1981).
[50]810 F.2d 188 (8th Cir. 1987).
[51]828 F.2d 1151 (6th Cir. 1987).
[52]U.S. Const. amend. I. Another way of analyzing school officials' desire to maintain a particular environment, is to evaluate whether the educational process will be disrupted. The recent first amendment cases balance the students' free speech and expression rights against the schools' desire to disrupt the educational process.
[53]478 U.S. 675 (1986).
[54]*Id.* at 687.
[55]*Id.* at 684.
[56]*Id.* at 682.
[57]*Id.* at 685.
[58]108 S. Ct. 562 (1988).
[59]*Id. at 567* (*citing Bethel School Dist. v. Fraser*, 478 U.S. 675 (1986), *and Tinker v. Des Moines Indep. School Dist.* 393 U.S. 503, 506 (1969).
[60]*West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 632 (1943) (emphasis added).
[61]*Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966) (emphasis added).
[62]478 U.S. at 682 (emphasis added).
[63]*Hazelwood*, 108 S. Ct. at 568.
[64]*Id.* at 569.
[65]*Id.*
[66]*Id.* at 571.
[67]108 S. Ct. 562, 573 (Brennan, J., dissenting) (*quoting Kuhlmeier v. Hazelwood School Dist.*, 795 F.2d 1368, 1373 (8th Cir. 1986).
[68]108 S. Ct. 562, 581.
[69]*Id.*.
[70]*Id.* at 571.
[71]*Schaill v. Tippecanoe County School Corp.*, 679 F. Supp. 833 (N.D. Ind. 1988)
[72]*Id.*
[73]*Tinker*, 393 U.S. 502, 515 (Stewart, J., concurring).
[74]*Schaill*, 679 F. Supp. at 851 (emphasis added).

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