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The Development of Court Decisions in the United States on Students' Personal Appearance Rights in Public High Schools between 1900 and 1968

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THE DEVELOPMENT OF COURT DECISIONS IN THE UNITED STATES ON
STUDENTS' PERSONAL APPEARANCE RIGHTS IN PUBLIC
HIGH SCHOOLS BETWEEN 1900 AND 1968

by
Caroline Estell Webb

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VITA

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CHAPTER I

INTRODUCTION

Until recently, the general public, educators, and the legal profession have had little concern about student personal appearance rights in the public educational system. Furthermore, the whirlwind of controversy that existed over these rights, at first glance, appeared trivial. However, the legal and personal issues involved are serious.

The student wants the benefit of a public education without sacrificing any of his legal or personal rights. But the availability of public education is of necessity often subject to compliance with school regulations governing student appearance and conduct. The school's rules and regulations are to establish efficient, effective, and orderly public schools so that the process of education may successfully continue. This results in a confrontation between the right of the public school to establish student appearance regulations and the legal and personal rights of the student.

The courts are petitioned "to review the legality of such regulations and may order reinstatement or enrollment when the exclusion is made pursuant to regulations that are unreasonable, arbitrary, or discriminatory, or when
the exclusion infringes upon some constitutional right.\textsuperscript{1} As a result, both federal and state courts have been criticized by educators, students, the general public, and the legal profession.

Ira Marienhoff, a New York educator criticized court decisions by writing:

\textit{...the courts will succeed eventually in immobilizing the school's ability to control conduct, prescribe standards and set educational goals. ...they have obstructed the disciplinary function of the school regarding the removal of troublesome students who make it impossible for other students to learn. ...They have denied the right ...to prescribe standards or suitable dress. The courts have prevented the training of the young in the awareness of responsibilities that are commensurate with rights and privileges. ...The rights of those disturbed are as nothing compared to the 'right of this child to an education.' Just why the courts have been more solicitous in this matter than in the rights of those others to their education is a question not answered. Indeed, that question is not even raised. Counsel for the students must be present, and no mention is made of counsel for the multitudes that wish to learn but cannot because the courts have ordered the miscreant to remain.}

\textit{Do the courts really care. ...? Where does the responsibility of the school as the protector of the social values end? What happens when the students understand that no decision of the school is final, that the teachers have no means to enforce standards of honesty, probity, and integrity that may not be assaulted in the courts and there find a sympathetic judgement? ...The courts intrude with alacrity into areas of which they are ignorant, with rulings that herald the end of restraint and responsibility by the school in deference to the presumed rights of students who will listen to no regulations because the courts have become boards of education as the latter have become debating clubs.\textsuperscript{2}}

\textsuperscript{1}John E. Bugg, "Constitutional Law—Public School Authorities Regulating the Style of a Student's Hair," \textit{North Carolina Law Review}, 47 (December, 1968), 171.

Although this point of view is not held by the majority of educators, a vocal minority has made known its position.

Various positions are held by the students. Some students appear to agree with the position stated by the American Civil Liberties Union. It states that "While admitting that an individual's opinion is usually expressed through the written or spoken word... personal taste in dress and grooming is another technique in self expression." These students and the American Civil Liberties Union contend that education should not be granted on the basis of personal appearance. In general, these students believe that "as long as a student's appearance does not in fact disrupt the educational process, or constitute a threat to safety, it should not be of any concern to the school." Other students believe that school rules should be followed until they may be changed by students and administrators. And still a third group believes authority should be unquestioned. Similar views are held by the general public.

The legal profession's position is delineated by Mr. Garrison when he wrote:

As a general rule decisions of school boards affecting the good order and discipline of the school are final when they relate to the right of pupils to enjoy school privileges. Courts

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are not concerned with errors of judgement, but the reasonableness of regulations is a question of law for the courts despite the presumption that such regulations are a reasonable exercise of discretion. Whether a rule is reasonable is subject to inquiry by the courts, and they may compel, by mandamus, the directors of a school to admit a pupil unlawfully excluded.\footnote{Serge H. Garrison, "Rules and Regulations-Reasonableness and Validity," North Dakota Law Review, 37 (January, 1961), 122.}

Which position represents a true picture of the law? It is the purpose of this thesis to trace the development of court decisions in the United States which have influenced and determined students' personal appearance rights in public high schools between 1900 and 1968. The cases will be presented and interpreted so that the reader can understand how the courts have reached these decisions and then decide which position is the most representative of the law.

Certain limitations were made in researching this thesis. One was to limit research to student appearance cases at the secondary public school level. A second was to limit primary resource research to official and unofficial state supreme court and federal court reporters because the lower state courts do not require court transcripts for each case and because there is no categorization of lower state court decisions. A third limitation was that although the writer is not a legal expert, she has presented the law with some interpretation for the reader. The reader should be cautioned that only legal background and interpretation which is necessary to understand the courts' decisions is provided.
In order to present an accurate study of the development of court decisions the thesis is divided into five separate and distinct chapters. Chapter one evaluates the need, purpose, and format of the thesis. Chapter two examines the administrative agency, state court procedure, and early state court decisions. Chapter three is similar to chapter two; however, it concerns itself with later state court decisions. Chapter four scrutinizes the federal district courts' and the United States Supreme Court's procedure and decisions. In chapter five, the administrative agency is summarized, a synopsis of the state court, federal district court, and United States Supreme Court's procedure is presented, conclusions as to court decisions are deduced, and recommendations for further research are made. It should also be noted that each chapter has an introduction, body of information, summary, and conclusions.

In addition, the footnotes for all the legal references are cited according to legal form and the footnotes for all non-legal references are cited according to standard thesis form. This is done for the reader's convenience so that the reader may without difficulty refer to the sources he may wish to examine.

In summary, there is recent concern over the confrontation between the right of the public school to establish student appearance regulations so that the educative process may continue and the legal and personal rights of the student. The courts are petitioned to settle the legality of such disputes. And they, in turn, are criticized by educators, students, the general public, and the legal profession. Divergent views are held in each
group, but enough questions are asked by all the groups to establish the need for the research study presented. The purpose of this thesis is to answer these questions by tracing the development of court decisions in the United States which have influenced and determined students' personal appearance rights in public high schools between 1900 and 1968.
CHAPTER II

PRE-DEPRESSION STUDENT DRESS RIGHTS AT THE STATE COURT LEVEL

Before beginning a chronological study of student appearance cases at the state level, it is necessary to ascertain the purpose of an administrative agency, to determine the school board's role as an administrative agency, and to understand the relationship between the school board and the state courts.

An administrative agency is created by the legislature and its authority is restricted to the power it is delegated by the legislature. Since the legislature may not delegate more power than it has, the administrative agency's authority is further restricted by the federal and state constitutions.

The agency's functions have been compared and contrasted with the legislative, executive, and judicial functions of the government. The legislative function establishes a future course of conduct for a group of people by making rules. The executive function enforces these rules. While the judicial function of the agency adjudicates or determines the present rights and duties based on a past incident, many times these functions overlap and merge.

In general, the government and the people have recognized administrative
agencies as an essential part of our governmental structure. Attorney General Hurst in 1955 said, "They were created as a necessary means for protecting public interests which could not be suitably protected by the courts or other means. . . . Administrative agencies must be enabled and permitted to function efficiently and effectively if the public interest which is their primary concern, is to be preserved."6

The administrative agency, in this instance the school board, provides a specialized and orderly process to fulfill the needs of a particular segment of society. A great number of people are not sufficiently affected by some action to assert their interests in a judicial proceeding which many consider as awkward, slow, and expensive. The administrative agency offers these people convenient, specialized, and speedy decisions.

In Illinois, as in most states, the legislature delegates power to the school board by saying that the school board shall have the power "to adopt and enforce all necessary rules for the management and government of the public schools of their district."7 The statute gives the school board the power to achieve the basic objective of education. The school would be in a chaotic state unsuitable for teaching and learning without rules made

and enforced by the school board or its representatives. However, the statute is not to be interpreted as giving dictatorial powers to the school board. The school board must follow an orderly procedure while making, enforcing, or adjudicating. Otherwise, there would be a violation of the individual’s rights to due process of law as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

If the individual believes he is adversely affected or aggrieved because of an agency action, he has recourse to judicial review by a court. Generally, the court will review the agency action to determine if an individual’s rights have been violated only after all administrative avenues are exhausted. In most cases, the court cannot determine if the individual was aggrieved by the administrative agency until the administrative remedies are exhausted.

Once the court does decide to review the action, it may review all the administrative functions. To examine the rule, the court generally applies a three part validity test which states "a legislative rule is valid...if it is (a) within the granted power, (b) issued pursuant to proper procedure, and (c) reasonable." If the rule does not violate the three part validity test, it is as binding on the court as a statute. If there is a violation

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8Kenneth C. Davis, Administrative Law Text (1959) hereinafter cited as Davis, at 87.
of this test, the school board's decision cannot stand.

The areas of enforcement and adjudication are difficult to distinguish. Enforcement may be the result of adjudication, or it may occur as a separate, independent function, or it may be a separate, independent function which is later ratified by the board in its adjudicating capacity. The court uses the substantial-evidence rule to review the board's action in the areas of enforcement and adjudication. This rule limits itself to the reasonableness test in reviewing findings of fact while deciding questions of law. Questions of law include constitutional law, statutory law, common law, administrative jurisdiction, fair administrative procedure, arbitrary or capricious action, and abuse of discretion.

If the statute does not prescribe the methods by which and the circumstances in which administrative action is to be reviewed by the court, the individual may resort to extraordinary remedies. The purpose of these remedies is to enforce a right or to prevent the violation of an individual's rights. These remedies include writs of mandamus, prohibition, quo warranto, certiorari, habeas corpus, and many others. Sometimes the individual may also seek injunctive relief in the court of equity. It is up to the individual to seek the proper avenue to have his case reviewed by the court. His case will not be reviewed unless he chooses the proper remedy. However, if the statute has indicated other methods and circumstances for administrative action to be reviewed, the court is unlikely to permit these remedies to be used.
Finally, it must be kept in mind that the court is not to assume the power delegated to the school board and overturn decisions which are within the discretion of the board. The court is only to review decisions to prevent an abuse of power.

The first recorded case regarding student appearance regulations was McCaskill v. Bower. Mr. McCaskill sought to restrain the superintendent and public school trustees from refusing admission to his two sons because they had failed to comply with a regulation which stated "... each male pupil over four feet and six inches in height and between certain named ages is required to wear a uniform which costs the sum of $13. ..." He alleged that the regulation was unconstitutional.

Relief was denied by the Georgia court because Mr. McCaskill had not chosen the proper procedure to follow. He should have alleged that the rule was enforced and then sought a writ of mandamus to compel the school officials to admit his children.

In Carr v. Inhabitants of the Town of Dighton, the Carr children were expelled from school because they were lice-ridden, but they were to be readmitted once the situation was corrected. The jury was to decide if

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9126 Ga. 341, 54 S. E. 942 (1906).
10Id. at 943.
11299 Mass. 304, 118 N. E. 525 (1918).
the school committee acted in good faith. The jury was not asked to determine if the school board's regulation was reasonable, but only if their regulation was enforced with due regard to the rights of the Carr family.

There were five points for the jury to consider. They were: (1) Mr. Carr said the school committee did not give him the opportunity to be heard, (2) later one member of the school board stated there was a misunderstanding in not giving Mr. Carr a hearing, (3) only three of the five children were examined for lice before sending all five children home from school, (4) there was testimony that the children were free of head lice, and (5) Mr. Carr referred to the revengefulness of the teachers. The jury decided for Mr. Carr.

The legal encyclopedia, *Corpus Juris Secundum*, states:

The decision of such board, if exercised in good faith, on matters affecting the good order and discipline of the school is final as far as it relates to the rights of pupils to enjoy school privileges, and the courts will not interfere with the exercise of such authority unless it has been illegally or unreasonably exercised; but the courts will interfere to prevent the enforcement of a rule which deprives the pupil of rights. . . . 12

The school committee was not acting in good faith since it did not follow the proper procedure which would give Mr. Carr the opportunity to present his side of the issue. If it were evident that the school committee had followed the proper procedure of granting Mr. Carr a hearing and safeguarding his legal rights, this case would not have been left to the jury to determine the facts. No factual issues of whether the school committee was acting in good faith would have occurred.

12 79 C. J. S. *Schools and School Districts* §494 (1952).
In Valentine v. Independent School District, the school board was accused of being unreasonable and arbitrary in the making of a regulation. After Miss Valentine successfully completed four years of high school, she was ready to graduate. Her class was told by the school board and superintendent that they were to wear caps and gowns for the graduating ceremony. Miss Valentine rented her cap and gown and had them fumigated. She was told by the health physician that they still might be contagious. In addition, they also had an extremely offensive smell which sickened Miss Valentine and her classmates. On graduation night, all but three members of the class refused to wear the caps and gowns. Only these three members received their diplomas.

In order to enter college Miss Valentine needed her high school record and her diploma. The superintendent refused to relinquish them because he claimed that they were his private property. Miss Valentine took her plea to a trial court asking for a writ of mandamus to have the records and diploma delivered to her. The trial court decided against her.

She then went to the higher court on appeal. The court granted her the writ stating "...we are of opinion that the order of the board was unreasonable and arbitrary, and therefore such a rule as the board had not a right to make, and that the board exceeded its powers."14

13187 la. 555, 17 ll. N. W. 334 (1919); 191 la. 1100, 183 N. W. 434 (1921).
14Id. at 339.
Two years later the Independent School District was still fighting the writ of mandamus given to Miss Valentine. The Iowa Supreme Court confirmed this decree. The court then went on to say:

The wearing of a cap and gown on commencement night has no relation to educational values, the discipline of the school, scholastic grades, or intellectual advancement. Such a rule may be justified in some instances from the viewpoint of economy, but from a legal viewpoint the board might as well attempt to direct the wearing of overalls by the boys and calico dresses by the girls. The enforcement of such a rule is purely arbitrary and especially so when the offending pupil has been passed for graduation after the performance on her part of all prescribed educational requirements. We are not questioning the propriety of wearing caps and gowns. It is a custom we approve. The board may deny the right of a graduate to participate in the public ceremony of graduation unless a cap and gown is worn. 15

The court did not recognize a relationship between caps and gowns for graduation and educational values. As a result, the superintendent and school board were forced to release Miss Valentine's records and diploma. But the court did recognize the board's right to exclude graduates from participating in the ceremony if they did not comply with their rule.

Another case in which the reasonableness of a regulation was the issue was Jones v. Day. 16 The board of trustees of a public agricultural high school in Mississippi had passed two regulations that Mr. Jones sought injunctive relief to perpetually enjoin the enforcement of and to have these two regulations null and void. The first regulation was that

15 Id. at 436, 437.
16 127 Miss. 136, 89 So. 906 (1921), 18 A. L. R. 645 (1922).
the students were required to wear khaki uniforms and that the students were to own no more nor less of these uniforms than specified. The second regulation Mr. Jones objected to was that all students were to wear at all times (including weekends) the prescribed khaki uniforms when visiting public places within five miles of the school.

The lower court found that the orders of the board of trustees were not so unreasonable since the testimony indicated that the uniforms aided in school discipline. But the court added"...if it is the purpose to invade the home and undertake to say what the children should wear at home, that would be unreasonable."17

The Mississippi Supreme Court upheld the lower court's decree. The higher court reasoned since this was an agricultural school with a dormitory, the school was acting in loco parentis. This meant the school had the authority to control the pupil when he was in school. Boarding students were to follow the rules at all times since the school was acting in place of their parents. Day students were to follow the rules and regulations on the way to school, in school, and on the way home. Once home, the parents resumed their role and the student became a child under the direction of his parents. Jones v. Day was interesting because it clearly defined the school's role as in loco parentis and the parent's role as natural parents.18

17Id. at 906.
18Id.
At times the reviewing courts differ as to determining why the actions of a school should be upheld. The case of Pugsley v. Sellmeyer is an example of such a disagreement. Miss Pugsley, an eighteen year old woman, refused to submit or obey the rule that stated, "The wearing of transparent hosiery, low-necked dresses, or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited."20

Miss Pugsley was told to wash the talcum powder off her face and not to return to school with it on. She returned, offered herself as a student, but was denied admission because she infringed the rule by continuing to use talcum powder on her face. She then refused to obey the rule and was denied admission.

Miss Pugsley went to court to petition for a writ of mandamus to compel the defendants to reinstate her as a pupil in the public school. Before the court would decide if there were an issue, both the school board and Miss Pugsley would have to follow the proper procedure. Since Miss Pugsley did not follow the proper procedure by first applying for relief to the school directors, the court did not have an administrative action to review. The lower court denied her relief.


20Id. at 1213.
She then took her case to the Arkansas Supreme Court. It denied the appeal and upheld the lower court's decision even though the Supreme Court said the wrong reason was given. The higher court held the rule was not void and relief should have been denied on that ground.

The following section very concisely stated the sentiment of the Arkansas Supreme Court:

Courts have other and more important functions to perform than that of hearing the complaints of disaffected pupils of the public schools against rules and regulations promulgated by the school boards for the government of the schools. The courts have this right of review, for the reasonableness of such rule is a judicial question, and the courts will not refuse to perform their functions in determining the reasonableness of such rules, when the question is presented. But, in doing so, it will be kept in mind that the directors are elected by the patrons of the schools over which they preside, and the election occurs annually. These directors are in close and intimate touch with the affairs of their respective districts, and know the conditions with which they have to deal. It will be remembered also that respect for constituted authority and obedience thereto are an essential lesson to qualify one for the duties of citizenship, and that the schoolroom is an appropriate place to teach that lesson; so that the courts hesitate to substitute their will and judgment for that of the school boards, which are delegated by law as the agencies to prescribe rules for the government of the public schools of the state, which are supported at the public expense.

The majority of the Arkansas Supreme Court believed that the school board as an administrative agency was to make rules, enforce these rules, and adjudicate if necessary, since it was more familiar with these areas as far as education was concerned. The court also thought that rules taught

21Id. at 1215.
respect for authority which was an important lesson for citizenship that
the school was to teach. And finally the court indicated that if the
public was not satisfied with the school board and its rules, it could
elect new members at the next annual election. This sentiment appeared
to be the attitude of most state court in pre-depression days.

However, Pugsley v. Sellmeyer was the first case in which there was
a dissenting opinion. 22 Justice Hart was the first justice to publically
question the reasonableness and discretion of a school rule as far as
student dress was concerned. He said,

"I think that a rule forbidding a girl pupil of her age from
putting talcum powder on her face is so far unreasonable and be-
yond the exercise of discretion that the court should say that
the board of directors acted without authority in making and en-
forcing it. "Useless laws diminish the authority of necessary
ones." The tone of the majority opinion exemplifies the wisdom
of this old proverb. 23"

In People ex rel. Lamme v. Buckland, Mr. Lamme's daughter was expelled
from school because she refused to comply with a rule made by the school
committee which prescribed uniforms to be worn by the girls. 24 Mr. Lamme
petitioned in his daughter's behalf for a writ of mandamis to compel her
reinstatement in the high school. Both the lower and higher courts denied

23Id. at 1216.
24 81 Colo. 240, 269 P. 15 (1928).
Mr. Lamme's daughter relief. Neither Colorado court commented on the school board's rules and regulations. Instead, the court commented that Mr. Lamme had not followed the proper procedure. He should have exhausted all administrative avenues, in this case the county superintendent. An expert in the field of administrative law, Mr. Kenneth Davis, very nicely summarizes the courts' basis for their reasoning by saying, "...every court requires exhaustion when the question presented is one within the agency's specialization and when the administrative remedy is as likely as the judicial remedy to provide the wanted relief." Since the superintendent and the school board were a specialized administrative agency, all avenues of relief had to be attempted before the court would review the administrative action.

It should be noted that again as in Pugsely v. Sellmeyer, there was a dissenting opinion. One justice of the Colorado Supreme Court felt that the question should have been heard by the court. Although it is not clearly stated in the record that the justice was in agreement with Mr. Lamme and his daughter, overtones suggested that the justice might have been sympathetic to them.

In summary, the school board is recognized as a specialized adminis-

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25 Davis at 356.

trative agency capable of rule making, enforcement, and adjudication within the authority granted by the legislature and further limited by the federal and state constitutions. Its purpose is to manage the schools so that the process of education may successfully continue.

If the individual believes that the administrative action has violated his rights, he has recourse to judicial review by a court. The court will normally review administrative agency action only when the proper legal procedure is followed. But the court is not limited to reviewing one function of the administrative agency. To review rule making, the court uses the three part validity test. To review the areas of enforcement and adjudication, the court uses the substantial-evidence rule. However, the purpose of the court is not to usurp the authority granted to the school board, but to be certain there is no abuse of power by the school board and its representatives.

All litigation concerning student dress and appearance has occurred in the twentieth century. There were three pre-depression instances of parents wishing to enjoin school boards from making and enforcing rules which prescribed uniforms. In 1906, in the case of McCaskill v. Bower, the Georgia Supreme Court eliminated the case from review because Mr. McCaskill failed to select the proper remedy and did not allege that the rule had been enforced.27 Fifteen years later in the case of Jones v. Day,

27126 Ga. 341, 54 S. E. 942 (1906).
the proper procedure was used. The Mississippi court upheld a rule requiring uniforms as valid and reasonable because the school indicated it assisted in maintaining discipline. Seven years later in People ex rel. Lamme v. Buckland, the court did not comment on the uniform requirement regulation because the plaintiff had not exhausted all administrative avenues.

In the case of Carr v. Inhabitants of the Town of Dighton, the rights of the Carr family were violated. A rule prohibiting lice-ridden children from attending school was reasonable, but the court overturned the board's action. The school board did not follow the proper procedure of granting a hearing and discriminated against the Carr family.

In Valentine v. Independent School District, the Court reserved the right to see if a rule was related to educational objectives. It declared a rule unreasonable which provided for withholding the high school records and diploma of a student for refusing to wear a cap and gown during the graduation ceremony. But the court did recognize the board's right to require students to wear caps and gowns if they were to participate in the graduation ceremony.

28127 Miss. 136, 89 So. 906 (1921), 18 A. L. R. 645 (1922).
2984 Colo. 240, 269 P. 15 (1928).
30299 Mass. 304, 118 N. E. 525 (1918).
31187 La. 555, 174 N. W. 334 (1919); 191 La. 1100, 183 N. W. 434 (1921).
The court in *Pugsley v. Sellmeyer* upheld a dress rule made by the school board. The court did not look to the educational objectives of the rule and it assumed the rule to be valid until proven invalid. The court also indicated the school board was better suited than the court to decide if the rule was necessary. Only Justice Harlan questioned the rule's reasonableness, but he did not explain his legal basis for this conclusion.

An explanation for the limited number of student dress litigation might be traced back to *Dritt v. Snodgrass*. This case was cited in most student dress cases. Mr. Dritt questioned the right of the school board to regulate social activities outside of school. The Missouri court confirmed the board's right to regulate. The concurring opinion stated the court's position. It said, "When the school room is entered by the pupil, the authority of the parent ceases, and that of the teacher begins; when sent to his home, the authority of the teachers ends, and that of the parent is resumed. For his conduct when at school, he may be punished or even expelled, under the proper circumstances; for his conduct when at home, he is subject to domestic control." Another reason for limited litigation might be that the public

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33 66 Mo. 286, 27 Am. R. 343 (1877).

34 *Id.* at 298.
agreed with the rules and regulations made by the school board. Perhaps, the administrative agency because of its power to make rules, enforce, and adjudicate, settled many disputes. Or an alternative might be that it was easier to comply with the rule or regulation than to litigate.

The following conclusions may be reached after analyzing the cases in this chapter: (1) the school board's right to make rules that regulate student dress and appearance was established, (2) the courts preferred to let the school board settle disputes, (3) both the school board and the individual were to follow the proper procedure, (4) the three part validity test was applied by the court to determine the legality of the school rule, (5) the court, in Jones v. Day and in Pugsley v. Sellmeyer, accepted the school board's rule as reasonable without questioning the purpose or objectives of the rule, (6) the minority opinion in Pugsley v. Sellmeyer accused the school board's rule of being unreasonable, but gave no criteria for this conclusion, and (7) the court in Valentine v. Independent School District questioned the board's educational objectives before determining if the rules were reasonable. 35

35 127 Miss. 136, 89 So. 906 (1921); 158 Ark. 247, 250 S. W. 538, 30 A. L. R. 1212 (1923); Id.; 187 La. 555, 174 N. W. 334 (1919); 191 La. 1100, 183 N. W. 434 (1921).
CHAPTER III

POST-DEPRESSION STUDENT DRESS RIGHTS AT THE STATE COURT LEVEL

The administrative agency's purpose and functions in post-depression cases is the same as its pre-depression role. The administrative agency has been recognized by the government and the people as a necessary part in our governmental structure. Its purpose is to fulfill the needs of the people in a specialized capacity. It offers convenience, specialization, and speediness in reaching a decision. In a society as large as this one, this is an indispensable service.

The administrative agency, in this instance, the school board, derives its authority from the legislature. The legislature may limit the administrative agency as it sees necessary and further restrictions are made by the federal and state constitutions. Generally, the school board may make rules, enforce, or adjudicate to secure the best possible educational results as long as the individual's rights are not violated and the proper procedure is followed.

If an individual feels he has been aggrieved by the administrative agency action, he may seek redress. Administrative remedies are available and usually should first be exhausted before petitioning the court to review the administrative agency's actions.
The court may review all or part of the administrative agency's functions if it finds it necessary:

... to prevent the enforcement of a rule which deprives a pupil of rights to which the law entitles him or which tends to alienate the pupil from proper parental authority, or which manifestly reaches beyond its sphere of action, and relates to subjects in no way connected with the management or successful operation of the school, or which is plainly calculated to subvert or retard the leading object of the school legislation of the state.\(^\text{36}\)

Generally, the court applies the three part validity test to examine the administrative agency rule. This three part test states "... a legislative rules is valid ... if it is (a) within the granted power, (b) issued pursuant to proper procedure, and (c) reasonable."\(^\text{37}\) In the areas of the board's enforcement and adjudication of school rules, the court uses the substantial-evidence rule. This rule limits itself to the reasonableness test in reviewing facts while deciding questions of law.

In some states, the methods by which and the circumstances in which administrative action is to be reviewed by the court is not specified. In these instances, the individual may use extraordinary remedies or injunctive relief in a court of equity to enforce a right or to prevent the violation of his rights. It is important to remember that the individual

\(^{36}\text{C. J. S. Schools and School Districts § 494 (1952).}\)

\(^{37}\text{Davis at 87.}\)
has the responsibility for selecting the proper remedy. If the statute establishing the administrative agency indicates methods and circumstances for administrative action to be reviewed, the court probably will not permit other remedies to be used.

Lastly, it must be remembered that the court is only to review decisions to prevent an abuse of power. It is not to overturn decisions which are within the discretion and delegated power of the board to make.

The first post-depression case was Stromberg v. French. The school board passed a rule which said, "...after September 29, 1930, any boy wearing heel plates on his shoes will be refused admittance to classes and will be suspended or expelled until the heel plates are removed." Murray Stromberg complied with the rule after he and several other boys were asked to do so. Later, when his mother noticed that he had removed the heel plates, she questioned him and had him replace them.

When Murray wore the shoes with the heel plates to school, the school authorities sent him home. He was told he could return when he had removed the heel plates. His father, Mr. Stromberg, was informed of the action by the school board and met with them. Mr. Stromberg insisted that he had the right to determine his son's dress at school. The school board disagreed.

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38 60 N. D. 750, 236 N. W. 477 (1931).

39 Id. at 478.
As a result, Mr. Stromberg sought to enjoin the school board from enforcing the rule which he considered arbitrary and unreasonable. The lower trial court upheld the rule as a reasonable one and also upheld the school board's right to enforce it. The decision was appealed by Mr. Stromberg.

The North Dakota Supreme Court was asked to decide several issues. To review the rule, they applied the three part validity test. The higher court found that the school board was granted its authority by the legislature and also indirectly from the state and federal constitutions. Next, the court noted that the proper procedure was followed by the school board in its enactment and enforcement of the rule. In the court's opinion, the rule was reasonable because it was aimed at the conservation of school property and the maintenance of good school order and discipline.

The higher court was also asked to determine if the right of the parents to educate, discipline, and direct their children was paramount to the public interest. The North Dakota court agreed with the trial court that the rule did not cause a hardship or indignity to the Stromberg family, and that the public interest in education was paramount to the parent's rights.

The plaintiff in his issues also asked if the school board would be able to absolutely prescribe apparel. The court replied that the safeguard of reasonableness in the three part validity test would prevent this from occurring.

Finally, the plaintiff claimed that Murray should not be expelled for
insubordination because there was no malice nor a willful disregard of rules on Murray's part. He was an obedient son following his parents' direction. The North Dakota Supreme Court found Murray to be insubordinate. To explain its reasoning the court said, "No rule or regulation could be enforced, provided the parent directed the pupil not to observe it."  

Relief was denied Mr. Stromberg and judgment of the lower court was affirmed.

The case of Antell v. Stokes primarily dealt with secret organizations. The school committee passed a rule prohibiting secret organizations. One part of the rule mentioned dress. It stated, "The wearing of jerseys, sweaters, caps, or other conspicuous evidence of membership in an unapproved secret organization is hereby forbidden on the school premises."

Mr. Antell asked for a writ of mandamus. He wanted the court to determine if the school committee had the authority to regulate secret student organizations. Massachusetts' statutory law gave the school committee the right to supervise and control all athletic and other organizations when they are connected with the school. The court interpreted this right to mean, "Rules adopted by the constituted authorities for the governance of

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10 Id. at 480
12 Id. at 408
public schools must be presumed to be based upon mature deliberation and for the welfare of the community. The court dismissed the petition. Although no comment was made about student dress by neither the court nor Mr. Antell, this case was included in this study to accurately trace the chronological development of student dress cases.

In Matheson v. Brady, a petition for a writ of mandamus was sought to compel the defendant to permit Mr. Matheson's daughter to attend classes in slacks. In their briefs, neither party used the proper procedure in stating that the Forest Park High School was part of the state school system.

The Georgia Superior Court said,

There is no allegation that it is a part of the State School System, either as a county-wide school system or an independent school system; and in the absence of such allegation, there is no official duty alleged. ... There is nothing in the petition that designates the Forest Park High School as being a part of the State School System, any more than as a private school. Even though, in fact, it be a part of the State School System, this court could not take judicial cognizance thereof under the Code, § 38-112.

This section of the Georgia code limited the court's cognizance of previous court records on the same case which would have given the necessary information. As a result, since it was not stated as part of the Georgia school system and the code prevented the court from referring to the records, the petition was dismissed.

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43 Id. at 407.
45 Id. at 704.
The case of *Mitchell v. McCall* was unique. Eulene Mitchell was suspended from a public school in Alabama for refusing to (a) wear the prescribed gym costume, (b) perform certain physical exercises, and (c) attend the physical education course because her attendance would require her to be present when the other girls wore the prescribed costumes and performed the exercises she considered immodest and sinful. The school board and the Mitchell family reached a compromise on the costume and the exercises. The Alabama Supreme Court was only concerned with Eulene's physical attendance. Mr. Mitchell claimed Eulene's attendance would be a violation of her religious rights secured by the state and federal constitutions.

The court pointed out that Alabama was under no constitutional obligation to provide public schools and school attendance was not required. But a statute did require a physical education course to be carried out in the public, private, and parochial schools of the state.

The court reasoned that Eulene did have the right to make use of state facilities, and that "... the State of Alabama can place reasonable, non-discriminating conditions on the privilege of attending public schools since such attendance is voluntary." It was also noted that the school did make certain concessions because of Eulene's religious beliefs.

The court then stated:

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46 *273 Ala. 604, 113 So. 2d 629, 632 (1962).*

47 *Id.*
All citizens in so far as they hold views different from the majority of their fellows are subject to such inconveniences. . . . It is precisely every citizen's right to be a "speckled bird" that our constitutions, state and federal, seek to insure. And solace for the embarrassment that is attendant upon holding such beliefs must be found by the individual citizen in his moral courage and strength of conviction, and not in a court of law.48

If Eulene did not agree with the court decision, she did not have to go to school. For these reasons, the court decided that her constitutional rights were not violated.

There is no indication that the case of Mitchell v. McCall was appealed to the Supreme Court of the United States.49 It is probable that the United States Supreme Court would have overruled the Alabama Supreme Court decision because Eulene's religious beliefs were limited by the Alabama court. This is an infringement of her constitutional rights guaranteed in the First Amendment of the United States Constitution.

One of the leading cases involving rules about the length and style of a student's hair was Leonard v. School Committee of Attleboro.50 After attending classes at his high school for two days, George Leonard, a senior, was told to get a haircut and was not permitted to return to his classes until he had so done. George was a professional musician since the age of twelve. He had performed at the Newport Jazz Festival and the New York World's Fair.

48 Id.
49 Id.
His professional image in part was based on his hair style and a change in image might affect his success.

His parents requested a hearing to discuss and explain the situation. However, no settlement was reached between the board and the Leonards. As a result, George's parents, in his behalf sought injunctive relief to compel the school to readmit him. They also questioned the rule as being unreasonable and arbitrary since they believed hair styles had no connection with the successful operation of the school. Instead, they felt this to be an invasion of family privacy.

The Massachusetts court's reasoning was based on two parts of the three part validity test. The court noted that the proper procedure had been followed by the school board and its representatives thus fulfilling one part of the validity test. The court did not cite evidence nor committee reports to indicate that George's hair had interfered with discipline. Instead, the court theorized that the rule was reasonable by saying:

We are of opinion that the unusual hair style of the plaintiff could disrupt and impede the maintenance of a proper classroom atmosphere or decorum. This is an aspect of personal appearance and hence akin to matters of dress. Thus, as with any unusual, immodest or exaggerated mode of dress, conspicuous departures from accepted customs in the matter of haircuts could result in the distraction of other pupils.\textsuperscript{51}

The reasonable part of the validity test was fulfilled.

\textsuperscript{51}Id. at 472.
The court commented on the Leonard's claim of an invasion of family privacy. It felt that the rights of the students, teachers, and others were paramount in maintaining an efficient school system.

The last state level student appearance case was Akin v. Board of Education of Riverside Unified School District. In this case the court had to decide if a school regulation that prohibited students from wearing beards was an infringement of federal and state constitutionally guaranteed freedoms. In September, 1965, Kevin Akin after growing a beard enrolled at Polytechnic High School in Riverside. The school board also in September, 1965 adopted a good grooming policy which prohibited students from wearing beards. Since he violated the school policy, Kevin was suspended. For the rest of the 1965-1966 school year Kevin attended a private school where he was permitted to wear his beard. In the fall of 1966, Kevin tried to enroll at Polytechnic High School, but he was denied admission because of his beard.

On September 16, 1966 Kevin's parents acting on his behalf filed a petition for a writ of mandamus in the Superior Court. The writ was denied. The Akins appealed to the California state Court of Appeals. They claimed that the school board had violated Kevin's constitutional right of freedom of speech as expressed in the First Amendment and his constitutional right of liberty founded in the Fourteenth Amendment.

52 68 Cal. Rptr. 557 (1968).
The Akins asked two witnesses to testify. One witness was a teacher from the private school that Kevin attended. He said that Kevin was a good student and that there was no discipline problem resulting from Kevin's beard. The Akins second witness was a bearded student who testified that he had attended summer school at North High School in Riverside. He testified that neither the principal nor teachers directed him to remove the beard and that there was no incident because of his beard.

The Akins then noted that Kevin's father wore a beard and that Kevin was imitating him. They concluded by saying that they were no longer financially able to afford private schooling for Kevin.

The state Court of Appeals reasoned that the school had shown the regulation to be a reasonable one by citing two examples of difficulties with beards. One example was a foreign student who had a moustache. The boy was ridiculed. The other example dealt with a basketball player who also had a moustache. Disruption resulted when other boys wanted one. Since an academic system is best served when there is no disruption, the regulation prohibiting beards and moustaches was reasonable.

The court also noted that when the benefit gained by the public outweighed the individual's right, the public benefit was more important. Furthermore the court pointed out that no other alternative which was less subversive of the student's constitutional rights was available. Lastly, the court reasoned, citing Leonard v. School Committee of Attleboro as precedent,
that family privacy must give way to school discipline because community rights are paramount.\textsuperscript{53} For these reasons, the lower court verdict was upheld.

In summary, the school board as an administrative agency is to manage the schools so that the process of education may successfully continue. The individual has recourse to judicial review by a court if he believes that the administrative action only when the proper procedure is followed.

To review rule making, the court usually uses the three part validity test. To review the areas of enforcement and adjudication, the court uses the substantial-evidence rule. However, the primary purpose of the court is to be certain that there is no abuse of authority by the school board and its representatives.

Between 1931 and 1968, six cases pertained to student dress and appearance. In five of these instances, the three part validity test was applied. In 1931, in the case of\textit{ Stromberg v. French}, Mr. Stromberg thought that a school regulation prohibiting heel plates on shoes was unreasonable.\textsuperscript{54} The North Dakota court after reviewing the school board's source of authority, the procedure used, and the regulation as described in the validity test, found that the school board had fulfilled the requirements when making and enforcing the regulation prohibiting heel plates on shoes.


\textsuperscript{54}60 N. D. 750, 236 N. W. 477 (1931).
In 1934, the case of Antell v. Stokes dealt with a question of the school committee's authority to regulate organizations. \(^{55}\) The Massachusetts's court found that statutory law gave the school committee the right to supervise and control all athletic and other organizations connected with the school. Thirty-one years later in Leonard v. School Committee of Attleboro, the reasonableness of the school regulation determining the length and style of a student's hair was challenged. \(^{56}\) The Massachusetts's court noted that the school has the power to make rules and that the proper procedure had been followed. It also noted that the hairstyle of a student could interfere with discipline. The rule was reasonable because it prevented possible disruption. The school board had fulfilled the validity test.

The fourth instance in which the validity test was applied was Matheson v. Brady. \(^{57}\) This case failed the proper procedure part of the test. Neither party had stated that the high school was a part of the Georgia school system. Georgia statutes prohibit courts from referring to previous court records. As a result, the petition was dismissed.

The fifth and most recent case was Akin v. Board of Education of Riverside Unified School District. \(^{58}\) The reasonableness part of the three part


\(^{57}\) 202 Ga. 500, 43 S. E. 2d 703 (1947).

\(^{58}\) 68 Cal. Rptr. 557 (1968).
validity test was used to determine if a school regulation prohibiting beards was not in violation of the student's rights. The court noted that since previous beards and moustaches caused disruptions in the school, the regulation was a reasonable one. It also noted that when there is a conflict between community rights and individual rights, community rights are paramount. The court ruled in favor of the school.

The sixth case, Mitchell v. McCall, dealt with religious rights. The Alabama court found that since there were no requirements for compulsory school attendance and because concessions had been made for Rulene Mitchell's religious beliefs, she would have to abide with the statute requiring that a physical education course be provided for and fulfilled by the students. This case was not appealed. If it had been brought to the United States Supreme Court, it would have been interesting to note the court's decision regarding the constitutionality of the decision.

One explanation for the limited number of post-depression appearance cases might be the precedent established by pre-depression student appearance cases. Individuals considering litigation could have been disheartened by the court's rulings in the earlier cases which usually found the school board to be legally correct. It was easier to comply with the rule or regulation of the school board than to litigate. Another explanation might be

59 273 Ala. 604, 113 So. 2d 629, 632 (1962).
that in many instances the school board settled the disputes satisfactorily so that litigation was not necessary. Still another explanation might be that the public, in general, agreed with the school board's rules or regulations.

The following conclusions may be reached after analyzing the cases in this chapter: (1) the school board's right to regulate student dress and appearance was re-enforced, (2) proper procedure was to be followed by both the school board and the individual, (3) the three part validity test was applied by the court to determine the legality of the school rules, (4) reasonableness of the regulation was proven in Stromberg v. French, Antell v. Stokes, and Akin v. Board of Education of Riverside Unified School District, (5) the court theorized the reasonableness of the school regulation in Leonard v. School Committee of Attleboro, (6) community rights are paramount to individual rights in Akin v. Board of Education of Riverside Unified School District, and (7) the court in Mitchell v. McCall limited religious rights to support a school rule.

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The federal district courts have jurisdiction to hear cases where Congress has specifically given them the authority to do so. The lower federal courts have no inherent authority in and of themselves to hear any cases. Congress has invested the lower federal courts with the power to hear cases involving civil liberties in Title 28§ 1343 (1964). This section states:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

1. To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

2. To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

3. To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

4. To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. 61

In adjudicating these cases brought before the court, the courts determine if there has been a violation of the Civil Rights Act of 1964. It is only if the individual can show that he is entitled to relief under this act that the court may grant relief.

Although the federal courts decide questions of law that stem from common law, statutory interpretation, constitutional law, administrative jurisdiction, fair administrative procedure, and protection against arbitrary or capricious action or abuse of discretion, the reader should be aware that the student personal appearance cases in this chapter are constitutional in nature. In order to determine the constitutionality of a regulation, the courts' examine the United States Constitution and the statutory provisions of the Civil Rights Act of 1964. The reader should also be cautioned that in the cases in this chapter the courts are only concerned with the rule making function of the school board and not the adjudicative function.\(^\text{62}\) The latter is probably only necessary to show that the rule either has or will be enforced so that the student may show that he may properly ask the court to intervene to protect his civil rights.

The jurisdiction of the Supreme Court of the United States differs from the lower federal courts. The Constitution states:

\(^{62}\text{For an explanation of the administrative agency functions, refer to chapter two, pages seven and eight.}\)
...to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Supreme Court in all the personal appearance cases has appellate jurisdiction. This means that the case must involve matters within its jurisdiction and that the case must be brought on appeal to the Supreme Court of the United States. The Supreme Court reviews law and fact under the Civil Rights Act of 1964.

The first federal district court decision regarding student appearance was made in Burnside v. Byars. In September, 1964, a group of Negro students wore freedom buttons (which had the words "One Man One Vote" and "SNCC") to the Brooker T. Washington High School in Mississippi. The principal, Mr. Moore, announced that the buttons were not to be worn in school or in class.

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63 U. S. Const. art. III §2.
64363 F. 2d 744 (1966).
Mr. Moore believed that this disciplinary regulation was necessary because the buttons did not have any bearing on their education and would cause a commotion in the school. It is interesting to note that previously Beatle buttons and His-Her buttons were worn in school and that no disciplinary action was taken to prohibit their display. He also referred to the Student Handbook, 1962-1963. Paragraph G states:

Regulations for Student Conduct:
Discipline is looked upon by the administration as a means to accomplish two primary purposes:
(a) to insure students and teachers against annoying, distracting or disorderly conduct which results in the loss of valuable time and learning opportunities;
(b) to help develop within each student the capacity for enlightened self control.

On September 21, 1964, three or four students wore the buttons. They were given the opportunity to remove them. The three who refused were sent home. The next day all were back in school without the buttons. On September 24, 1964, Mr. Moore was summoned to a class where thirty or forty students were displaying the buttons. They were given a choice of removing the buttons or going home. The majority went home and were suspended for a week. A letter concerning the suspension was sent home.

All the parents, except for Mrs. Burnside, Mrs. English, and Mrs. Morris, cooperated with the school. These three ladies instituted civil rights action under 42 U. S. C. A. § 1983 (1964) for a preliminary injunction pursuant to

65 Id. at 746.
28 U. S. C. A. § 1343 (1964) to prevent school officials from enforcing the regulation. Section 1983 states:

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

This section protects the "rights, privileges, and immunities secured by the Court and Laws" guaranteed to an individual. Section 1343 establishes the court's jurisdiction.

The ladies also believed that the school regulation abridged the children's First and Fourteenth Amendment rights and as a result it was an unreasonable rule. The First Amendment guarantees freedom of expression from congressional abridgement. The Fourteenth Amendment guarantees that "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."  


67 Id.

68 U. S. Const. amend. XIV.
The Court of Appeals' reasoning was intricate but logical. The First Amendment embraces the right to communicate a matter of vital public concern and to protect the right against infringement by state officials. The Negro students who attended an all Negro high school wore the freedom buttons to encourage their community to exercise their civil rights.

Although the Fourteenth Amendment protects the First Amendment rights of citizens "against the State itself and all of its creatures—Boards of Education not excepted," the First Amendment right of freedom of speech can be abridged by state officials to protect state interests. In *Burnside v. Byars*, the students were only mildly curious about the freedom buttons; there was no commotion nor disruption of classroom decorum. As a result, no state interest had to be protected. The Court of Appeals held that the school regulation prohibiting students from wearing freedom buttons was arbitrary and unreasonable, that it was an infringement of constitutionally protected rights, and that the lower court abused its discretion by refusing to grant an injunction.

In conclusion, Circuit Judge Gewin designated the court's position by saying:

*We wish to make it quite clear that we do not applaud any attempt to undermine the authority of the school. We support all efforts made by the school to fashion reasonable regulations for the conduct of*
their students and enforcement of the punishment incurred when such regulations are violated. Obedience to duly constituted authority is a valuable tool, and respect for those in authority must be instilled in our young people.

But, with all of this in mind, we must also emphasize that school officials cannot ignore expressions of feelings with which they do not wish to contend. They cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.71

The same court on the same day reviewed Blackwell v. Issaquena County Board of Education.72 On January 29, 1965 approximately thirty pupils at the all-Negro Henry Weather High School in Mississippi wore freedom badges. Some of these pupils were creating a disturbance by noisily talking in the hall. Three of these pupils were brought to the principal's office to be told no one would be permitted to cause a disturbance and that they were to remove the buttons. On February 1, 1965, one hundred fifty pupils wore freedom buttons and forcibly pinned the badges on them. The principal, Mr. Jordan, assembled the pupils in the cafeteria. He told them that they were forbidden to wear the buttons at school. Several students were discourteous and hostile; they called Mr. Jordan an "Uncle Tom."

71 Id. at 749.

72 363 F. 2d 749 (1966).
The next day two hundred pupils wore buttons. They were assembled in
the gym, were reminded of the rule prohibiting freedom buttons, and were told
if they wore them in school, they would be suspended. On February 3, 1965,
pupils wore the buttons. The principal suspended them. At this point, chaos
broke loose. Some pupils entered classrooms urging others to go home. A bus
driver entered the building and passed out buttons. Buttons were thrown
through the windows. Eventually order was restored. Three hundred pupils
were suspended for the remainder of the school year after they did not return
to school in twenty days.

Meanwhile, the parents met with the superintendent and principal, but no
agreement was reached. On April 1, 1965, the parents sought civil rights
action under 42 U. S. C. A. § 1983 (1964) to enjoin pursuant to 23 U. S. C. A.
§ 1343 (1964) school officials from enforcing a regulation forbidding freedom
badges as a denial of First and Fourteenth Amendment rights. The court denied
relief and the decision was appealed.

There is a similarity between the Burnside and Blackwell cases.73 In
both civil rights cases, the parents alleged that the school rule prohibit-
ing the wearing of freedom badges was an unreasonable and arbitrary rule that
violated the First and Fourteenth Amendments. However, there is also an im-
portant difference between the two cases. Student disorder and confusion

73363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
resulted in the Blackwell case when the freedom badges were worn.\textsuperscript{74} There was no student disorder in the Burnside case.\textsuperscript{75}

The Court of Appeals reasoned that the constitutional guarantee of liberty of expression does not grant an absolute right to speak, and that the law recognized that there can be an abuse of freedom of speech. In the Blackwell case because students were forcing their views on others, they were abusing their constitutional guarantees.\textsuperscript{76} The rights of an individual may not take precedence over the rights of the majority.

The school regulation was also examined. A reasonable regulation is one which is "essential in maintaining order and discipline on school property. . . and . . . which measurably contributes to the maintenance of order and decorum within the educational system."\textsuperscript{77} The rule forbidding the wearing of freedom buttons was necessary to maintain discipline.

For these reasons, relief was denied.

Ferrell v. Dallas Independent School District was a hair style case.\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{74} 363 F. 2d 749 (1966).
\item \textsuperscript{75} 363 F. 2d 744 (1966).
\item \textsuperscript{76} 363 F. 2d 749 (1966).
\item \textsuperscript{77} Id. at 753.
\item \textsuperscript{78} 261 F. Supp. 515 (1966).
\end{itemize}
Phillip Ferrell, Stephen Webb, Paul Jarvis, their mothers, and their agent, Kent Alexander, on September 7, 1966, reported to the principal's office instead of their homerooms. The purpose of their visit was to confer with Mr. Lanham even though they understood that admission would be denied because of their hair styles. Mr. Lanham refused to admit them and advised them to get their hair cut or trimmed before coming back to enroll.

The boys, members of a combo called Sounds Unlimited, insisted that they were under contract with Mr. Alexander to maintain a certain style of dress and appearance. Instead of getting a hair cut, they went to several other Dallas high schools seeking to transfer but were advised by Mr. Lanham that it was too late to apply for a transfer. The boys then went to the Administration Building of the Dallas Independent School District to see the superintendent, Dr. White. On the steps of the building, Paul Jarvis met Mr. Allen, the assistant superintendent. Paul was told that there was no rule concerning hair length. The policy was that each principal determined the building's code of discipline. Later in a phone conversation with the plaintiffs' attorney, Dr. White advised them he would stand behind his principal.

Paul Jarvis also said Mr. Lanham first told him he would be admitted in school but would have to have his hair trimmed in a couple of days. However, the next day Mr. Lanham told Jarvis that the matter had been reconsidered and that he would not be admitted until his hair was trimmed.

On September 8, 1966, the boys tried to enroll again. Mr. Lanham refused
to enroll them because of their Beatle hair styles. Meanwhile, Mr. Alexander notified three television stations and half a dozen radio stations of the boys' enrollment difficulties. After the unsuccessful conference with Mr. Lanham, the group conducted interviews. Their story was reported on all the television channels complete with film and interviews. In addition, there was local and national news coverage. Later on the same day, the combo recorded a song entitled "Keep Your Hands Off of It" which was distributed by Mr. Alexander to the local radio stations.

The boys' parents instituted the court proceedings claiming that Mr. Lanham's action was arbitrary, discriminating, and violated their constitutional rights. The court's jurisdiction was based on section one of Amendment Fourteen and the Civil Rights Act of 1964, Public Laws 88-352, Title 42, U. S. C. A. and particularly §§ 1981, 1983, and 2000 a (1964).

Section 1981 states:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and actions of every kind, and to no other. 79

Section 1983 protects the individual from any deprivation of "rights, privileges, or immunities secured by the Constitution and laws." 80

And section 2000 a-1 states:

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

The defendants claimed that there was no question involving United States laws nor the United States Constitution. They also claimed that the boys had not exhausted the administrative remedies.

The court used the three part validity test to review this case. The legislature delegated the school the authority to regulate the public educational system thus establishing the school’s authority. The rule was issued pursuant to the proper procedure.

To demonstrate that the rule was not arbitrary nor unreasonable, the court referred to Leonard v. School Committee of Attleboro. In this case, the possibility of disruption was sufficient to establish that hair style regulations were not arbitrary nor unreasonable.

In addition, no rights of the students were deprived because there were indications from earlier school incidents that trouble would have occurred had the boys wearing Beatle hair cuts been permitted to enroll in school.

The district court indicated its position by saying:

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One of the most important aims of the school should be to educate the individual to live successfully with other people in our democracy. Since the school authorities, by legislative grant, control the public educational system, their regulations play a part in the educational process. This is but another way of stating that society expects public education to concern itself with building young citizens.

Relief was denied.

The court's analysis of the situation differs remarkably from the Burnside and Blackwell interpretations. In these two cases, the court required that actual disruption be evidenced to justify any restriction. In the Ferrell case, the court abandoned this procedure and instead held that actions of school officials are not limited to actual disruption. The possibility of disruption was sufficient to regulate.

This raises a new issue. If the administration, faculty, and general public cause a disruption or suggest the possibility of a disruption, can the individual's constitutionally protected rights be abridged?

This point was answered in Terminallo v. City of Chicago. Terminallo, advertised as a Catholic Priest, he later was found to be suspended by his Bishop, was brought to Chicago to address a racist group called the Christian Veterans of America. In his address, "Christian Nationalism or World Commi-

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84 363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
86 69 S. Ct. 894, 93 L. Ed. 1131 (1949).
nism—Which?", he attacked the New Deal, "Queen" Eleanor, and the mob outside the auditorium as "slimy scum, snakes, and bedbugs." But he did not encourage violence on the part of his people.

Terminello was arrested because anyone who "...aid ed ...in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the city. ...shall be deemed guilty of disorderly conduct. ..." He was fined one hundred dollard by the Municipal Court of Chicago. He appealed to the Illinois Supreme Court, then to the Appellate Court, and finally to the United States Supreme Court.

The United States Supreme Court noted that although speech is often provocative and challenging, Terminello did not invite action from his people. Instead, he received a reaction from the mob outside. The court concluded by indicating that the court must protect the individual from censorship or punishment unless a clear and present danger above public inconvenience, annoyance, or unrest existed.

Davis v. Firment was a hair style case. Howard Davis violated a school regulation prohibiting long, shaggy hair and/or sideburns. On Sep-

87 Id. at 895.
88 Id.
tember 9th and 12th, 1966 Howard was told by at least two of his teachers that his hair was excessively long. On September 12th and 13th, 1966, the principal issued bulletins with the regulation.

Finally on September 13, 1966, Howard was suspended for three days because he did not comply with the regulation. Thereafter, he was suspended for willfully disobeying the principal's instruction.

On September 22, 1966, Mr. Davis unsuccessfully attempted to have Howard reinstated. Readmission was refused. Later Mr. Davis, Howard, and their attorney met with the superintendent, two assistant superintendents, and the principal. However, no settlement was reached. A petition of review of the superintendent's decision was presented to the board. The Orleans Parish School Board went on record with the superintendent and principal as refusing readmission to Howard unless he obtained a hair cut. On September 28, 1966, Howard was readmitted after he had a hair cut.

The suit was brought under the Civil Rights Act, Title 42 U. S. C. A. § 1981 (1964) and jurisdiction was sought under 42 U. S. C. A. 1988 (1964) on the grounds that the action violated the First, Eighth, Ninth, and Fourteenth Amendments of the United States Constitution.

Section 1981 provides for equal rights under the law. Section 1988 outlines the proceedings in vindication of civil rights. It states:

The jurisdiction in civil and criminal matters conferred on the district courts...for the protection of all persons in the United
States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. 90

The court applied the three part validity test. Since the state had granted the school board and its representatives the authority to make regulations, there was no abuse of power. Louisiana law also gives the school principal the right to suspend any pupil guilty of deliberate disobedience. Howard Davis was suspended because he deliberately disobeyed the principal.

The proper procedure was followed. Mr. Davis, Howard, and their attorney had the opportunity to meet with the administration and with the school board. The regulation was considered reasonable because previously students had fought about hair styles. The three part validity test was fulfilled.

The court reasoned that since hair is not symbolic of anything, it is not an expression guaranteed by the First Amendment thus answering one allegation.

The plaintiffs next claimed that a right to privacy was established in

Griswold v. Connecticut. 91 The court agreed that this case did establish marital privacy as a sacred and fundamental right even though marital privacy is not specified in the Constitution. But it noted that a hair style could not be equated with marital privacy as a fundamental and sacred right protected by the Ninth Amendment which reads, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."92

The court further noted that the Eighth Amendment was not violated because no cruel and unusual punishment was administered. Finally, the court observed that the Fourteenth Amendment right of due process of law was not violated. Therefore, because no constitutional right buttressed by the Civil Rights Act was at issue, relief was denied.

Tinker v. Des Moines Independent Community School District is the last student appearance case to be reviewed in the chapter.93 This case is not in chronological order since in 1968 it was appealed to the United States Supreme Court.

In December, 1965, school officials were told that several students were planning to wear black arm bands to school to express their beliefs relating

91 381 U. S. 479 (1965).
92 U. S. Const. amend. IX
to the war in Viet Nam. A regulation prohibiting arm bands on school property was promulgated by school officials and supported by the board of education.

After the regulation was passed, John F. Tinker, Mary Beth Tinker, Paul Tinker, Hope Tinker, and Christopher Eckhardt wore the arm bands to school "to mourn those who had died in the Viet Nam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas Day, 1965, be extended indefinitely."94 All of the children knew of the school regulation. They all were suspended and each returned to school after the Christmas holiday vacation without the arm bands.

Mr. and Mrs. Tinker acting in behalf of their children took action against the school district, its board of directors, and certain administrative officials and teachers to recover nominal damages and obtain an injunction against enforcement of a regulation prohibiting the wearing of black arm bands on school facilities pursuant to provisions of 12 U. S. C. A. § 1983 (1964). Jurisdiction was sought under 28 U. S. C. A. § 1343 (1964) on the grounds that their First and Fourteenth Amendment rights were violated.

The federal district court in their reply began with the assumption that freedom of speech is not absolute. It said, "The abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually

94 Id. at 972.
The court further said:

A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation. On the other hand, the plaintiff's freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.

Although the plaintiffs cited Burnside v. Byars and Blackwell v. Issaquena County Board of Education, the court did not feel these decisions were binding. However, these decisions were to be treated with respect. The court concluded by saying:

...it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a

95Id.
96Id. at 973.
97363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably calculated to prevent such a disruption, it must be upheld by the Court.96

The court found that the regulation was reasonable and did not deprive the plaintiffs of their constitutional rights of freedom of speech and due process of law.

The Tinkers appealed the decision to the Supreme Court of the United States. The court accepted the decision for review. Justice Fortas in delivering the court's opinion stated the conflict that had to be settled when he said, "Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities."99

The majority recognized that the court in previous cases had emphasized the need for school authorities to prescribe and control conduct in the schools and that the district court feared turmoil because United States involvement in Viet Nam was a controversial topic." But our Constitution says we must take this risk...and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.100

99Id.
100Id. at 507.
To justify the prohibition of a constitutional right the state must show that there is more than a desire to avoid the unpleasantness accompanying an unpopular viewpoint. There was no such finding in this case. Not all political symbols nor controversial symbols such as the Nazi cross were prohibited. More importantly, there was no disturbance. Instead, it appeared that the authorities wished to avoid present day controversial matters. For example, earlier an article about Viet Nam was banned from the school paper. Justice Fortas stated the majority opinion. He said, "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution."

The majority agreed that ideas may be expressed if done without interfering with the appropriate discipline in operation of the school. In Tinker v. Des Moines Independent Community School District, the wearing of black arm bands was a symbolic act within the free speech clause of the First Amendment and the arm bands were divorced from actual or potential disruptive behavior.

Concurring opinions were written by Mr. Justice Stewart and Mr. Justice White. Justice Stewart was in agreement with the majority except for the "Court's uncritical assumption that, school discipline aside, the First Amend-

101 Id.
ment rights of children are co-extensive with those of adults."103

Justice White was in basic agreement with the majority except for these two points. He noted that all acts impinge on some valid state interest, but that the state has no right to take away freedom of speech because they have a duty to educate. Justice White also did not agree with the Burnside v. Evans decision which was cited by the majority to reach their decision.104 It appears that Justice White thought the majority lacked sufficient forcefulness in their position.

Mr. Justice Black and Mr. Justice Harlan each wrote a dissenting opinion. Justice Black began by stating that freedom of speech is limited by the public good. He further noted that there was some disruption in classroom routine because of the arm bands. Justice Black then concluded that unless the court returned to the reasonableness test as used by the state courts, a new era of permissiveness in which the schools will be told by the students what to teach would begin.

Justice Harlan wrote in his dissenting opinion that he did not feel the regulation was motivated other than by legitimate school concerns. However, he did not define the limits of what school concerns are in restricting per-

103Id. at 511.
104363 F. 2d 7th (1966).
personal rights and liberties.

In summary, the federal district courts have jurisdiction to hear cases where Congress has specifically given them the authority to do so. Title 28 § 1343 grants the court jurisdiction. The individual is granted relief if he can show he is entitled to relief because the Civil Rights Act of 1964 was violated and if the regulation fails the three part validity test.

The reader should be cautioned that in the cases in this chapter, the courts are only concerned with the rule-making function of the school board and not the adjudicative function.

Although the Supreme Court has original jurisdiction in special areas, in all personal appearance cases, it has appellate jurisdiction. The case must involve matters within its jurisdiction and the case must be brought on appeal. The Supreme Court reviews law and fact which have been decided in the lower court under the Civil Rights Act of 1964.

All litigation concerning student dress and appearance rights at the federal court level has occurred since Congress passed the Civil Rights Act of 1964. There were two instances of parents on behalf of their children attempting to enjoin school boards from making rules which prohibited the wearing of freedom badges in school. Both of these cases were civil rights action brought under 42 U. S. C. A. § 1983 (1964) and 28 U. S. C. A. § 1343 (1964). Both also claimed that the regulation denied them their First and Fourteenth Amendment rights.
In 1966, in the case of Burnside v. Byars, the Court of Appeals in reversing the lower court held that the school regulation was arbitrary and unreasonable. Furthermore, it was an infringement of constitutionally protected rights. On the same day, the same Court of Appeals reviewed Blackwell v. Issaquena County Board of Education. In this case, the court reasoned that freedom of expression is not absolute because the students were abusing their constitutional guarantees by forcing their views on others. And that the rights of an individual may not take precedence over the rights of the majority. The court noted that because the school regulation was necessary to maintaining discipline, it was a reasonable one. For these reasons, relief was denied.

The two hair style cases were brought under different section of the Civil Rights Act of 1964, Ferrell v. Dallas Independent School District was based on Title 42 §§ 1981, 1983, and 2000 a of the Civil Rights Act of 1964. The court applied the three part validity test and found that the school board had the authority to regulate, that the proper procedure was followed, and that the regulation was reasonable. No student rights were deprived because there were indications that if the boys had been permitted

105 Id.
to enroll, trouble would have occurred.

The court's analysis of the Ferrell case differs from the Burnside and Blackwell interpretations.\textsuperscript{108} In Burnside and Blackwell, actual disruption had to be evidenced to justify any restriction.\textsuperscript{109} In Ferrell, the possibility of disruption was sufficient to regulate.\textsuperscript{110} This raises a new issue. Can an individual's rights be abridged if the public's reaction to him is disruptive? According to Terminello v. City of Chicago, the court concluded that the individual's rights must be protected from censorship or punishment unless there was a clear and present danger other than public inconvenience, annoyance or unrest.\textsuperscript{111}

Davis v. Firment was the other hair style case.\textsuperscript{112} Suit was brought under the Civil Rights Act of 1964 under Title 42 \textsection\textsection 1981 and 1988 on the grounds that the action violated the First, Eighth, Ninth, and Fourteenth Amendments of the United States Constitution. The court reasoned that since hair is not symbolic of anything, it is not an expression guaranteed by the First Amendment. It also noted that although the Ninth Amendment protects

\begin{itemize}
  \item \textsuperscript{108}261 F. Supp. 515 (1966); 363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
  \item \textsuperscript{109}363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
  \item \textsuperscript{110}261 F. Supp. 515 (1966).
  \item \textsuperscript{111}69 S. Ct. 894, 93 L. Ed. 1131 (1949).
  \item \textsuperscript{112}269 F. Supp. 524 (1967).
\end{itemize}
such sacred and fundamental rights as marital privacy, hair style cannot be equated to marital privacy. The court further noted that the Eighth Amendment was not violated because no cruel and unusual punishment was enforced. And lastly, the Fourteenth Amendment was not violated because no constitutional right was violated. Relief was denied.

The Tinker v. DesMoines Independent Community School District case was reviewed at the federal district level and by the United States Supreme Court. Suit was brought for nominal damages and to obtain injunctive relief pursuant to Title 42 § 1983 and Title 28 § 1343 on the grounds that the First and Fourteenth Amendment rights were violated.

The lower court found that if there is a possibility of disruption in the school, school officials must be given a wide discretion in making preventive regulations. It also stated that the disciplined atmosphere of a classroom, not the individual's rights, had precedent and protection of the law.

The Supreme Court reviewed the case on appeal. The majority opinion, written by Justice Fortas, reasoned that to justify the prohibition of a constitutional right, the state must show that there is more than a desire to avoid the unpleasantness accompanying an unpopular viewpoint. There was none shown in this case. Furthermore, ideas may be expressed if they cause no

disruption of discipline. Black arm bands are symbolic acts protected by the First Amendment. For these reasons, the court found for the plaintiffs.

Concurring opinions were written by Mr. Justice Stewart and Mr. Justice White. Mr. Justice Stewart was in agreement with the majority except for the court's assumption that children's rights are co-extensive with adult rights. It appears that Justice White thought the majority lacked sufficient forcefulness in their position.

Mr. Justice Black and Mr. Justice Harlan each wrote a dissenting opinion. Justice Black felt that freedom of speech can be limited by the public good. He also noted that unless the court returned to the reasonableness test as used by the state court, a new era of permissiveness would begin. Justice Harlan wrote that he felt the regulation was motivated by legitimate school concerns.

The limited number of student appearance litigation at the federal court level can be attributed to the complexity of constitutional issues. For example, the First Amendment's protection of freedom of speech is difficult to define. In United States v. O'Brien, O'Brien burned his selective service card to express his anti-war views. O'Brien claimed that his constitutional guarantee of symbolic speech was violated because he was arrested for knowingly destroying or mutilating a selective service certificate. Chief

114 U.S. 1673, 20 L. Ed. 2d 672 (1968).
Justice Warren, representing the majority of eight justices, pointed out that the government had a substantial interest; and that burning the selective service card was sufficiently frustrating to the government's interest to uphold the conviction. As a result, the court dismissed the idea that all types of symbolic conduct are protected under the First Amendment.

In the Burnside and Blackwell cases, freedom badges were recognized as symbolic speech.\textsuperscript{115} And in the Tinker case, black arm bands were recognized as symbolic speech.\textsuperscript{116} Both the freedom badges and the black arm bands represented an ideal. However, in the Ferrell and Davis cases, hair was not recognized as symbolic speech because it did not stand for anything.\textsuperscript{117}

The Ninth Amendment says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."\textsuperscript{118} Does this Amendment protect the right to determine your personal appearance as a fundamental and sacred right? According to the court in Davis v. Firment, the right to determine hair styles is not sacred nor fundamental.\textsuperscript{119}

\textsuperscript{115}363 F. 2d 744 (1966); 363 F. 2d 749 (1966).
\textsuperscript{117}261 F. Supp. 545 (1966); 269 F. Supp. 524 (1967).
\textsuperscript{118}U. S. Const. amend. IX
\textsuperscript{119}269 F. Supp. 524 (1967).
The nebulousness of the Fourteenth Amendment presents more difficulties. Some people interpret the Fourteenth Amendment as protecting the First Amendment right of freedom of speech because of the words "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."\textsuperscript{120} The word liberty may connote freedom of speech, but it also may connote other freedoms.

Another explanation for limited cases at the federal level may be the Civil Rights Act. Since its enactment in 1964, the courts have reviewed six appeals. This would indicate that more litigation will be brought to the federal level. Then again, until the Supreme Court resolved the conflict between actual disruption versus potential disruption, many people did not bring litigation.

Still another reason for limited litigation might be public agreement with the school rules and regulations. Perhaps, the administrative agency or lower courts successfully resolved the issues. Or an alternative might be that it was easier to comply with the rule or regulation than to litigate.

The following conclusions may be reached after analyzing the cases in this chapter: (1) the school board's right to make rules that regulate student dress and appearance was established, (2) the court used the United States Constitution and the Civil Rights Act of 1964 to determine the constitutionality of an issue, (3) the court also applied the three part validity

\textsuperscript{120}\textit{U. S. Const. amend. XIV}
test to determine the legality of a school regulation or rule, (4) in Burnside v. Byars and in Blackwell v. Issaquena County Board of Education, freedom badges were recognized as symbolic speech, (5) in the Burnside and Blackwell cases, the court used actual violence as a basis for abridging symbolic freedom of speech, (6) in Ferrell v. Dallas Independent School District, potential disruption was recognized as sufficient cause to abridge constitutionally guaranteed freedoms, (7) in Davis v. Fimment, hair was not recognized as symbolic speech, (8) in Tinker v. DesMoines Independent Community School District, the Supreme Court recognized black arm bands as symbolic speech protected by the First Amendment, and (9) in the Tinker case, the Supreme Court agreed that the black arm bands were divorced from potential and actual disruption, therefore no clear and present danger was shown as grounds to abridge a constitutionally protected right. 121

121 363 F. 2d 744 (1966); 363 F. 2d 749 (1966); Id.; 261 F. Supp. 545 (1966); 269 F. Supp. 524 (1967); 258 F. Supp. 971 (1965), aff'd, 393 U. S. 503 (1969); Id.
CHAPTER V

CONCLUSION

The purpose of this thesis is to trace the development of court decisions in the United States which have influenced and determined students' personal appearance rights in public high schools between 1900 and 1968. Before summarizing the development of these decisions, it is necessary to review the school board's and court's roles.

The school board is recognized as a specialized administrative agency capable of rule making, enforcement, and adjudication within the authority granted by the legislature and limited by the federal and state constitutions. Its purpose is to manage the schools so that the process of education may successfully continue.

The individual has recourse to judicial review if he believes that the administrative action has violated his rights. Normally, the lower court will only review the administrative action when the proper legal procedure is followed. If the administrative remedies are not adequate, the court will disregard the normal legal procedure.

To review rule making, the state courts use the three part validity test to determine if the regulation was "... (a) within the granted power, (b)
issued pursuant to proper procedure, and (c) reasonable.\textsuperscript{122} To review the areas of enforcement and adjudication, the court uses the substantial-evidence rule. Extraordinary remedies are also available to enforce a right or to prevent a violation of the individual's rights. The court's purpose should be remembered; it is to be certain that there is no abuse of power by the school board and its representatives.

The pre-depression cases discussed in chapter two established certain precedents. One was the school board's right to make rules that regulate student dress and appearance. Another precedent was that the court accepted the three part validity test as a standard to determine the legality of the school board rule. Although the use of proper procedure was stressed by the court, the rule's reasonableness was only questioned by the court majority in \textit{Valentine v. Independent School District}.\textsuperscript{123}

The post-depression cases analyzed in chapter three enforced the school board's right to regulate; they also confirmed the court's use of the three part validity test in determining the legality of the regulation. In the earlier cases, the court emphasized that the administrative agency had the granted authority and followed the proper procedure. In the post-depression cases, the court's emphasis was placed on the reasonableness of the rule.

\textsuperscript{122}Davis at 87.

\textsuperscript{123}187 Ia. 555, 174 N. W. 334 (1919); 191 Ia. 1100, 183 N. W. 434 (1921).
And lastly, the concept that community rights were paramount to individual rights was introduced by the court in *Akin v. Board of Education of Riverside Unified School District*. 124

In the author's opinion, one post-depression decision, *Mitchell v. McCall*, was a violation of constitutionally protected religious rights because the state limited Fulene's religious freedom. 125 Under certain circumstances when the majority rights are paramount or when a clear and present danger is evident, it is necessary to limit the rights of an individual. But, there was no evidence that either situation existed in this case. If the case had been appealed to a federal court, it would have been interesting to note the federal court's decision.

By 1968, the state court position was clearly defined. In general, the court felt that:

The decision of such board, if exercised in good faith, on matters affecting the good order and discipline of the school is final as far as it relates to the rights of pupils to enjoy school privileges, and the courts will not interfere with the exercise of such authority unless it has been illegally or unreasonably exercised; but the courts will interfere to prevent the enforcement of a rule which deprives a pupil of rights to which the law entitles him, or which tends to alienate the pupil from proper parental authority, or which manifestly reaches beyond the school board's powers, or beyond its sphere of action, and relates to subjects in no way connected with the management or successful operation of the school, or which is plainly calculated to subvert or retard the leading object of the school legislation of the state. 126

124 68 Cal. Rptr. 557 (1968).
125 273 Ala. 604, 143 So. 2d 629, 632 (1962).
The personal appearance cases in chapter four are concerned with the rule making function of the school board. The federal district courts have jurisdiction to hear cases where Congress has specifically given them the authority to do so. The Civil Rights Act of 1964 grants the federal courts' jurisdiction. To review the regulation's legality, the court expects the individual to show that he is entitled to relief because the Civil Rights Act of 1964 was violated. The court also applies the three part validity test to the regulation.

Although the Supreme Court has original jurisdiction in special areas, in all personal appearance cases, it has appellate jurisdiction. This means the case must involve matters within its jurisdiction and the case must be brought on appeal; the Supreme Court reviews law and fact which have been decided in the lower court.

The federal court cases established a criteria for abridging an individual's constitutional rights. The court recognized that when there is a conflict between the rights of many and the rights of an individual, the individual's rights must be abridged. In hair style cases, the lower federal courts have found that the threat of potential disruption to be enough cause to reasonably abridge the individual's rights. However, the Supreme Court in Tinker v. DesMoines Independent Community School District indicated that before freedom of symbolic speech be curtailed, there must be an actual disruption.\(^\text{127}\) Badges and arm bands were accepted as symbolic speech, but

hair styles were rejected by the lower courts because they did not, in the courts' opinions, symbolize anything.

The courts developed with time a gradual and more liberal attitude. First, it was necessary to establish the rights of the school board; next, the proper procedure had to be followed; and then, the reasonableness of the rule was questioned. At present, the individual's constitutional right to freedom of speech is deemed more vital than the potential disruption, it may incite. In the future, it is probable that the court will hold similar views about freedom of dress.

Even though the court's position has changed and progressed with the times, it is still criticized in some quarters for not doing enough or doing too much. The writer has traced the development of court decisions in the United States which have influenced and determined students' personal appearance rights in public high schools between 1900 and 1968 so that educators, students, and the general public be aware of the court's reasoning. This synopsis should be helpful not only to the student so that he may determine his rights, but also to the educator who must make and enforce school regulations.

Because the Supreme Court decision in *Tinker v. Des Moines Independent Community School District* resolved a difference in legal interpretation at the federal court level, there should be an influx of personal appearance cases. Each of these can and may modify the position of the court. The

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128 Id.
writer recommends that further research be conducted to account for and analyze recent decisions.

Future cases will primarily involve complex constitutional matters. Since constitutional law is remarkably difficult to apply, concepts seem to be fundamental and remarkably clear until they are applied to a real life situation. For these reasons, the writer recommends that only the necessary legal background and interpretation be provided for the reader. In addition, the writer also recommends that future researchers be thoroughly familiar with legal research methods.

Finally, the writer recommends that the findings of any future research be made available to educators, students, and the general public. Many misconceptions could be distilled if research results were readily accessible.
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APPROVAL SHEET

The thesis submitted by Caroline Estell Webb has been read and approved by members of the School of Education.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval with reference to content and form.

The thesis is therefore accepted in partial fulfillment of the requirements for the degree of Master of Arts.

Jan. 1970

[Signature]

[Signature]