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ABSTRACT

During the 1970s, courts repeatedly overruled acts of administrative censorship of high school publications, even when the publication in question included "earthy" language or attacks on school officials. The trend toward expanding students' First Amendment rights began in 1969 with the "tinker" ruling, which reaffirmed the right of three students to wear black armbands to class as a protest against the Vietnam war. At the high school level, 12 court decisions overturned censorship or discipline of student journalists by administrators in the 1970s. But a trend toward conservatism is emerging as language and subject matter that would have been tolerated by administrators only a few years ago are being censored in the 1980s. Beginning in 1977 with a ruling in favor of a school administration's act of prior restraint, in refusing to allow students to distribute a questionnaire concerning sexual attitudes on the grounds that the censored questionnaire "might" upset students, students lost a series of important court decisions that surely would have been won a few years earlier. School officials who censor student publications still risk a reversal in court, but more and more judges may be willing to overlook the "tinker" ruling and defer to school officials' predictions of disruption. (HTH)

SECONDARY EDUCATION DIVISION

STUDENT PRESS FREEDOM:

RETRENCHMENT IN THE 1980s

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INTRODUCTION

For more than a decade, the nation's appellate courts have been expanding the First Amendment rights of students who attend public schools. Beginning with the landmark Tinker v. Community School District[1] ruling of the Supreme Court in 1969, there has been a consistent trend toward ever greater Constitutional protections for student journalists.

During the 1970s, courts repeatedly overruled acts of administrative censorship, even when the publication in question included earthy language or vitriolic attacks on school officials. In the process, federal courts imposed strict procedural safeguards on administrators who would pre-censor even "underground" publications. Although judges often said that, in principle, student journalists did not have the same degree of Constitutional protection as their adult counterparts, even the most cautious and conservative judges were rarely able to uphold the acts of censorship that were challenged in their courtrooms.

However, the 1980s are a new era, and a more conservative political climate is sweeping the country. Today's students have abandoned the mood of liberal activism that was so prevalent in the late 1960s and early 1970s. Moreover, the new climate is as apparent in many of the nation's courtrooms as it is on campus. As often happens in times of social change, the courts are beginning to reflect the new spirit by reinterpreting the law. In the last two years, judges have shown an increasing tendency to uphold censorship actions by school officials--acts that would surely have been held unconstitutional a decade ago.

At this point, some courts are affording school officials broad discretion in censorship matters. If a school principal censors a publication on the ground that it might cause a campus disruption or endanger students' health and welfare, the courts are increasingly loathe to second-guess his decision. This new trend--an abrupt shift from the sanctification of students' First Amendment rights that was so evident only a few years ago--is alarming to civil libertarians, but it may be an inevitable change. In the nation's courtrooms as on the nation's high school campuses, an era seems to be nearing its end.

In tracing this new trend away from freedom of the student press, it is first necessary to summarize the judicial pronouncements that extended Constitutional protection to student journalists.

THE TINKER DECISION

In many areas of media law, the basic principles can be traced to a landmark Supreme Court decision, and student press freedom is one of those areas. In 1969, the Supreme Court decided _Tinker v. Des Moines Independent Community School District_, often called the "black armbands case". The case arose when John and Mary Beth Tinker, aged 15 and 13, and a 16-year-old friend were suspended for wearing black armbands at school as a symbolic protest against the Vietnam war. The Des Moines school principals had heard of the pending protest and hurriedly adopted a rule against wearing armbands on campus.

The suspension was challenged on First Amendment grounds.

Two lower courts upheld the school officials' action, but the Supreme Court reversed, declaring that the students' conduct was symbolic speech, protected by the First Amendment. The court said:

> "First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[2]

The court noted that the three students did nothing to disrupt the educational process and added: "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students."

However, the court did make it clear that the rights of students are not "co-extensive" with the rights of adults off campus. The court said freedom could be suppressed when its exercise "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." This language seemed of relatively little importance for a time, but in recent years school officials have seized upon it, forecasting campus disruptions as a way to justify their acts of administrative censorship.

THE POST-*TINKER* TRADITION OF FREEDOM

The *Tinker* decision had nothing to do with student press freedom--at least not directly. But indirectly, it had a great deal to do with it. In the years following *Tinker*, federal appellate courts all over America recognized that student publishing efforts at public schools were protected by the First Amendment. Very quickly, federal courts applied the *Tinker* precedent to both high school and college-level journalists, and by 1973 the Supreme Court had specifically affirmed its application to an underground newspaper editor at the college level.[3] Lower federal courts, meanwhile, were applying the *Tinker* rule to both official and underground high school and college publications. The college cases are important, but beyond the scope of this paper. In any event, the courts extended essentially the same constitutional protection to student editors at both levels, although in the late 1970s, judges began to hedge when confronted with younger high school students, a trend that will be discussed later.

At the high school level, no fewer than 12 federal appellate court decisions in the 1970s overturned censorship or discipline of student journalists by administrators. In almost all of these cases, administrators attempted to engage in prior restraint, often pointing to profanity or language they considered obscene as their justification. But the courts repeatedly told school officials that neither profanity nor four-letter-words constitute obscenity, and that something more must be shown to justify prior censorship.

In deciding these cases, the federal courts often focused on school procedures for reviewing student publications. The courts generally held that prior restraint is permissible on a school campus when it wouldn't be in the community at large, but to justify censorship administrators must bear a heavy burden of proof and provide students with many procedural safeguards--

things school officials failed to do in virtually all of the cases that were litigated through most of the 1970s.

However, the leading precedent in one federal appellate circuit (the seventh circuit, covering Illinois, Wisconsin and Indiana) seemingly banned prior restraint of school publications under all circumstances except when prior restraint of a commercial newspaper would also be constitutional (i.e. almost never). In Fujishima v. Board of Education[4], the federal court overruled the suspension of two students who distributed a paper called The Cosmic Frog. The court said Tinker did not permit school officials to merely predict a disruption and use that as an excuse to engage in censorship:

> "Tinker in no way suggests that students may be required to announce their intentions of engaging in certain conduct beforehand so school authorities may decide whether to prohibit the conduct. Such a concept of prior restraint is even more offensive when applied to the long-protected area of publication."[5]

In so ruling, the Fujishima decision took issue with Eisner v. Stamford Board of Education[6], an earlier ruling of another federal appellate court that said prior restraint would be acceptable if certain procedural safeguards were provided. The Fujishima court said:

> "We believe that the court erred in Eisner in interpreting Tinker to allow prior restraint of publication --long a constitutionally prohibited power--as a tool of school officials in "forecasting" substantial disruption of school activities."[7]

Nevertheless, during the 1970s most federal courts took the Eisner view rather than the Fujishima view, ruling that prior restraint is permissible if there are sufficient procedural safeguards. But, as it turned out, the courts almost never found adequate procedural safeguards--until recently.

Even in the Eisner case, the court overturned a Connecticut school system's censorship procedures because they did not provide for a quick administrative review or specify to whom and how literature could be submitted for prior review. Still, under the Eisner precedent, handed down by the second federal appellate circuit (which includes New York, Vermont and Connecticut), students probably still have less freedom from prior censorship than they do in some other appellate circuits. As will be noted shortly, the second circuit has been a leader in restricting student press freedom in recent years. (Each federal appellate court sets precedents that are binding in its region but not elsewhere, although federal courts often choose to follow non-local precedents.)

Elsewhere around the country, federal appellate courts have generally fallen somewhere between the stance of the second and seventh federal appellate circuits on issues of student freedom. Until recently, courts in the fourth and fifth circuits (covering the southern states) almost always reversed school officials' efforts to censor publications or discipline editors, while emphasizing that they were not flatly prohibiting prior censorship of school publications. Fourth and fifth circuit cases that so held include: Nitzberg v. Parks,[8] Baughman v. Freienmuth,[9] Quarterman v. Byrd,[10] Gambino v. Fairfax County School Board,[11] and Shanley v. Northeast Independent School District.[12]

In a number of these cases, the courts said prior restraint would be constitutionally permissible under something like the procedural safeguards required for motion picture censorship in the *Freedman v. Maryland* decision of the U.S. Supreme Court.[13] Thus, the *Baughman* decision emphasized the need for prompt review of any decision to censor, with clearly drawn guidelines describing the kind of material that could be censored. In the *Baughman* case, the court overturned a school policy that allowed prior restraint when material was libelous or obscene. The court said these were terms of art and much too vague to be applied by students and principals in censorship cases. Furthermore, since the *New York Times v. Sullivan*[14] and *Gertz v. Welch*[15] decisions of the Supreme Court, much that might seem to be libelous is privileged, the court pointed out.

The *Nitzberg* case echoed the ruling in *Baughman*, but also said that when school officials want to justify prior censorship by forecasting disruptions, they must have clearly drawn criteria that may be used in predicting that a publication will cause such a disruption.

The seventh federal appellate circuit, which decided the *Fujishima* case, has also decided two other student press freedom cases, *Scoville v. Board of Education*,[16] and *Jacobs v. Indianapolis Board of School Commissioners*.[17] The U.S. Supreme Court agreed to review *Jacobs* but then set it aside as moot, because the students had all graduated. However, *Jacobs* was an especially notable case because the appellate court emphasized that the use of earthy language doesn't make a publication legally obscene. In so ruling, the court cited the Supreme Court's *Papish*[18] holding that mere four (or twelve) letter words do not constitute obscenity.

Perhaps the high water mark for student press freedom came in the 1977 case of Gambino v. Fairfax.[19] That decision is significant because it arose from a fact situation that must be repeated hundreds of times every year somewhere in America: the editors of an official campus newspaper faced censorship because what they wrote was considered too sensitive and controversial for high school students. Gina Gambino and her staff wanted to publish an article on contraceptive methods in the student paper at a high school in Virginia. It was headlined, "Sexually Active Students Fail to Use Contraceptives." The principal reviewed and decided to censor certain parts of the article, contending that sex eduction instruction was prohibited at the school. Therefore, the student paper shouldn't do something the teachers were forbidden to do in class, the principal contended.

A federal district court overruled the school's censorship, brushing aside the argument that the public forum doctrine shouldn't apply because the paper was part of the school curriculum, produced by a class. Despite its status, the paper was still protected by the First Amendment, the judge ruled. The fourth circuit Court of Appeals affirmed that decision.

Thus, by 1977, federal courts in many areas had recognized the First Amendment rights of student editors at public schools. Students had been allowed to distribute literature on campus that contained personal attacks on administrators, four-letter words, provocative cartoons, and assorted other forms of dissent. In a single decade, the prevailing view of students' rights had moved from "in loco parentis" (i.e. the school authorities stand in the place of the parents, with nearly absolute power to discipline unruly students) to the position that students were nearly as free on campus as adults are off campus.

PRE-CURSORS OF A COUNTERVAILING TREND

However, in 1977 the pendulum began to move back in the other direction, albeit almost imperceptibly at first. The first notable setback for student freedom came from the second circuit U.S. Court of Appeals--never the strongest champion of student rights. In a 1977 case, Trachtman v. Anker,[20] the second circuit affirmed an act of prior restraint by school officials. Trachtman isn't a student press case strictly speaking: a group of students wanted to distribute a questionnaire on sexual attitudes at a New York high school, and then to publish the results in a school newspaper. A federal appellate court allowed the school administration to stop them. However, the court said literature distribution per se was not the issue here; expert witnesses had testified that responding to the questionnaire could cause psychological harm to some adolescent students. In fact, one of the two justices in the majority joined the dissenting third justice in emphasizing that this case should not be viewed as an "unintended" precedent for any future abridgement of student freedom of expression.

Nevertheless, the Trachtman majority opinion left little doubt but that school officials were being invited to reassert the authority over students that had seemingly been denied them in earlier decisions:

"In determining the constitutionality of restrictions on student expression such as are involved here, it is not the function of the courts to reevaluate the wisdom of the actions of state officials charged with protecting the health and welfare of public school students."[21]

In view of _Trachtman_, the next step was almost predictable: a federal district judge in New York cited the case as justification when he upheld a high school principal's decision to censor a student newspaper in 1979. In _Frasca v. Andrews_,[22] a judge said he didn't want to second-guess a principal who predicted that disruptions might result from two items in the school paper: a heated exchange between members of the school lacrosse team and the editors, and an article accusing a student body officer of incompetence. The principal halted distribution of the paper, even though it was the last day of the school year.

In effect, the federal judge in _Frasca_ allowed a school official to arbitrarily forecast a disruption as a justification for prior censorship, precisely what a court in another federal circuit had prohibited a few years earlier in _Fujishima_. In so ruling, the judge said courts should give school officials broad latitude in deciding what is best for their students:

"Since the disputes which arise in the day-to-day operations of our public schools cannot as a general rule be resolved by federal district judges...the rule has been wisely established that decisions of school officials will be sustained, even in a First Amendment context, when, on the facts before them at the time of the conduct which is challenged, there was a substantial and reasonable basis for the actions taken."[23]

Thus, the judge affirmed the principal's act of prior censorship, despite the fact that the school system had no guidelines whatever to govern such acts of censorship or to provide procedural safeguards for student editors. The judge even dropped in a gratuitous suggestion that the New York Times v. Sullivan libel principle should not apply to high school newspapers:

> "As important as an unrestrained press may be to the furtherance of our democratic government and society, the 'public figure' exception to libel liability ought not to be extended to the level of a high school newspaper editor's comments about a fellow student."[24]

Both Trachtman and Frasca illustrated the courts' new willingness to take the word of school officials' who predict campus disruptions as a way to justify censorship. What is most troubling about this trend is that, in any given situation, a school official can almost always predict some potential disruption of the normal routine on a school campus. The fact is that campus decorum is disrupted by everything from the school winning a berth in the state basketball playoffs to a news story in the local daily paper about a teacher being charged with drunk driving. In giving the authorities such carte blanche to forecast disruptions and then engage in prior restraint, the second circuit seems to be overlooking some of the key language in the Supreme Court's Tinker decision. The nation's highest court specifically warned of the dangers inherent in allowing school officials to justify censorship in this way:

> "The district court (in Tinker) concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our his-

tory 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."[25] (emphasis added)

Obviously, the federal judge who decided _Frasca_ wasn't willing to tolerate the sort of risk-taking for freedom's sake that the Supreme Court had in mind when it handed down _Tinker._

It would be easy to dismiss _Frasca_ as one federal judge's errant view--or perhaps one federal appellate circuit's errant view--of the relationship between the First Amendment and the student press. Even the second circuit has more recently handed down a decision in favor of student freedom, _Thomas v. Granville Board of Education._[26] In that 1979 case, the court overturned a disciplinary action against students who distributed about 100 copies of an underground paper near (but not on) school property.

The paper offended school officials because it had articles on masturbation and prostitution. However, no disruption resulted and the court said the students' Constitutional rights were violated by the disciplinary action. The court particularly focused on the fact that the students had sought school officials' advice about their publishing project, and were told not to distribute their paper on campus--an edict with which they complied. Thus, the court found this to be an instance of school officials punishing students for off-campus conduct that was protected by the First Amendment. In fact, school officials initially declined to take any action against the student journalists for their publication, but the president of the school board learned of it and pressured the administration to punish the students. In view of this chain of events, Judge

Irving Kaufman, writing for the court, said:

> "To perform ...effectively, professional educators must be accorded substantial discretion to oversee properly their myriad responsibilities. But our willingness to defer to the schoolmaster's expertise in administering school discipline rests, in large measure, upon the supposition that the arm of authority does not reach beyond the schoolhouse gate. When an educator seeks to extend his dominion beyond these bounds, therefore, he must answer to the same constitutional commands that bind all other institutions of government."[27]

Noting that school officials punished the students only in response to community pressure, Judge Kaufman added:

> "We may not permit school administrators to seek approval of the community at large by punishing students for expression that took place off school property. Nor may courts endorse such punishment because the populace would approve."[28]

Nevertheless, Kaufman also emphasized that this case was not comparable to the same court's earlier decisions in Eisner and Trachtman, primarily because here school officials were punishing students for off-campus conduct, not merely controlling student expression on campus. Thus, while the Thomas decision may be encouraging to those who favor freedom of expression for students, it had little effect on the second circuit's increasing tendency to allow school officials to proscribe student journalistic efforts.

THE WILLIAMS DECISION

Were a decision such as Thomas v. Granville the most recent ruling on freedom of the student press, it would be safe to say that, at least in most of the United States, student journalists are still remarkably free in the early 1980s.

However, in 1980, another appellate circuit--one with a long tradition of championing student press freedom--handed down a case approving administrative censorship. In what may be a harbinger of things to come, the fourth circuit Court of Appeals supported a censorship-minded school administration in Williams v. Spencer.[29] Thus, the fourth circuit has now joined the second in allowing administrators to forecast vague dangers to student welfare as a basis for censorship, despite the warnings against doing this in Tinker.

The Williams case was a stunning defeat for student press freedom for at least two reasons. It was, first of all, a ruling by the same court that handed down Gambino v. Fairfax only three years earlier, thus upholding the right of student journalists to publish an article on contraceptive methods in an official school newspaper. Moreover, the students in Williams were represented by Michael Simpson, then director of the Student Press Law Center and the attorney who won the Gambino case.

In Williams, the court affirmed a decision by school officials in Montgomery County, Maryland, to halt distribution of an underground newspaper called Joint Effort because the paper contained advertising for a "head shop", something officials said would encourage drug use. The ad offered water pipes of the type often used to smoke marijuana.

Citing the language in Tinker that students' rights are not "necessarily co-extensive with those of adults," the court affirmed school regulations under which the publication was banned. The court said a rule against distributing information dangerous to the health and safety of students was not unconstitutionally overbroad even though it did not specify the kind of material that could be censored. Thus, the court seemingly gave school officials broad latitude to justify censorship by contending that a single story or ad in a publication might encourage drug use or something else allegedly dangerous or unhealthy. The fourth circuit said nothing of the risk-taking on behalf of freedom that Tinker had said was required by the First Amendment.

Particularly troubling was the fact that, when a minor school official first decided to censor Joint Effort, he left little doubt that he was offended by a cartoon poking fun at him--not by the head shop advertisement. The health and safety issue was raised later, when school officials were casting about for a legal rationale to justify the action they had already taken--but apparently for a less defensible reason. In their legal briefs, school officials also argued that the cartoon was libelous, but the appellate court didn't even address that question, focusing instead on the health and safety argument.

In censoring Joint Effort, the school officials acted under the authority of a set of publications guidelines. Among other things, these guidelines prohibited the distribution of literature that might encourage actions "which endanger the health and safety of students". The students contended this policy was unconstitutionally vague and overbroad, but the federal appellate court disagreed:

> "Because of the infinite variety of materials that might endanger the health or safety of students, we conclude that the regulation describes as explicitly as is required the type of material of which the principal may halt distribution."[30]

Thus, the Williams decision would appear to offer administrators almost carte blanche to censor "underground" or unofficial student newspapers. After a decade of appellate court decisions upholding the right of students to distribute publications similar to Joint Effort, here was a court that had often sided with student journalists abruptly shifting its direction.

POST-WILLIAMS DECISIONS

This paper was originally written in March of 1981. Shortly thereafter, appellate courts in California handed two more decisions on freedom of expression at public high schools. In both, the courts continued the disturbing trend away from championing student rights. In Ortega v. Anaheim Union High School District,[31] California's fourth district Court of Appeals allowed school officials to remove a student editor for "insubordination" when he refused to obey the school principal's request to stop circulating leaflets critical of the administration.

Anthony Ortega, erstwhile editor of The Dispatch, the student newspaper at Savannah High School in Anaheim, circulated leaflets protesting the administration's decision to impound an issue of The Dispatch carrying an article criticizing the football coach. Ortega was fired as editor and involuntarily transferred to another school to complete his senior year.

Aided by the American Civil Liberties Union, Ortega sought reinstatement as both a Savannah student and editor of the student newspaper. Failing to win any relief from a trial court, Ortega appealed. The appellate court brushed aside Ortega's First Amendment arguments in denying his request for reinstatement as editor, although the court did order school officials to let him return to Savannah and graduate with his class. After this initial action in equity, further proceedings in the Ortega cases were still pending as of late June, 1981.

In early June, 1981, another California appellate court seemingly ignored the U.S. Supreme Court's Cohen v. California decision[32] in refusing to reinstate a high school student who wore an offensive anti-draft button to school. In Hinze v. Superior Court,[33] Spiros Hinze wore a button which read, "Fuck the Draft," (exactly the same words the Supreme Court had ruled non-obscene in the 1971 Cohen case). In Cohen, the Supreme Court had set aside a contempt of court citation, finding the words to be a Constitutionally protected form of political speech. But 1981 is not 1971, and the California appellate court maneuvered around Cohen.

Writing for the three-judge panel, Justice Norman Elkington acknowledged that the Supreme Court had found the specific words in question not to be obscene. However, Elkington said the schools have the authority to suspend students who have "engaged in habitual vulgarity." The words may not be obscene, but they are vulgar, Elkington ruled, focusing on the need for school order and discipline as a basis for the decision not to set aside Hinze's suspension.

It should be noted that neither of these cases represents a final judgment. Both were decisions denying preliminary injunctive relief. Different rulings could eventually be rendered in both instances, albeit long after the students involved have passed from the scene. But in both cases the courts ignored the early-1970s precedents, refusing to protect what would once have been considered the First Amendment rights of students.

CONCLUSION

Where does this leave us? It is clear that school officials who censor student publications capriciously still risk a reversal in court. However, as the era of militant student protest fades into history, it is also clear that the schools and the courts are reflecting changing social conditions. In the 1980s, courts can be expected to continue to affirm student editors' constitutional rights in clear cases of arbitrary censorship; but more and more judges may be willing to defer to school officials' judgment when a disruption is forecast or when an argument can be made that a publication includes subject matter encouraging dangerous or unlawful acts.

In the coming years, it seems likely that the pendulum will continue to swing away from student freedom and toward administrative authority. The days of "in loco parentis" may be gone forever, but the courts seem prepared to give school officials an increasingly free hand to control the content of student publications.

Only a decade ago, the federal courts were ordering school officials to allow the distribution of student publications containing political rhetoric, earthy language, and even opinions that reflected badly on administrators, teachers ~~or~~ other students. But in the 1980s, it is becoming increasingly clear that judges are viewing the student press in a different light. Neither school officials nor judges are showing much inclination to take risks for freedom's sake, despite the mandate to do so that was so central to the student press decisions of the 1960s and 1970s.

REFERENCES

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2. 393 U.S. at 506.

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4. Fujishima v. Board of Education, 460 F.2d 1355 (7th cir., 1972).

5. 460 F.2d at 1358.

6. Eisner v. Stamford Board of Education, 440 F.2d 803 (2nd cir., 1971).

7. 460 F.2d at 1358.

8. Nitzberg v. Parks, 525 F.2d 378 (4th cir., 1975).

9. Baughman v. Freienmuth, 478 F.2d 1345 (4th cir., 1973).

10. Quarterman v. Byrd, 453 F.2d 54 (4th cir., 1971).

11. Gambino v. Fairfax County School Board, 429 F.Supp. 731, aff'd 564 F.2d 157 (4th cir., 1977).

12. Shanley v. Northeast Independent School District, 462 F.2d 960 (5th cir., 1972).

13. Freedman v. Maryland, 380 U.S. 51 (1965).

14. New York Times v. Sullivan, 376 U.S. 254 (1964).

15. Gertz v. Welch, 418 U.S. 323 (1974).

16. Scoville v. Board of Education, 425 F.2d 10 (7th cir., 1970).

17. Jacobs v. Indianapolis Board of School Commissioners, 490 F.2d 601 (7th cir., 1973).

18. Papish, supra.

19. Gambino, supra.

20. Trachtman v. Anker, 563 F.2d 512 (2nd cir., 1977).

21. 563 F.2d at 519.

22. Frasca v. Andrews, 463 F.Supp. 1043 (1979).

23. 463 F.Supp. at 1052.

24. 463 F.Supp. at 1052.

25. 393 U.S. at 508.

26. Thomas v. Granville Board of Education, 607 F.2d 1043 (2nd cir., 1979).

27. 607 F.2d at 1044-45.

28. 607 F.2d at 1051.

29. Williams v. Spencer, 622 F.2d 1200 (4th cir., 1980).

30. 622 F.2d at 1205.

31. Ortega v. Anaheim Union High School District, 4 civ. 25504 (1981).

32. Cohen v. California, 403 U.S. 15 (1971).

33. Hinze v. Superior Court of Marin County, 1 civ. 49988 (1981).