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Knowledge of United States Supreme Court Decisions Affecting Education Held by Selected Tennessee Public School Personnel (Law)

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KNOWLEDGE OF UNITED STATES SUPREME COURT DECISIONS AFFECTING EDUCATION HELD BY SELECTED TENNESSEE PUBLIC SCHOOL PERSONNEL

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KNOWLEDGE OF UNITED STATES SUPREME COURT DECISIONS AFFECTING EDUCATION HELD BY SELECTED TENNESSEE PUBLIC SCHOOL PERSONNEL

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by

William Paul Abegglen

May 1986

APPROVAL

This is to certify that the Graduate Committee of

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met on the

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The committee read and examined his dissertation, supervised his defense of itin an oral examination, and decided to recommend that his study be submitted to the Associate Vice-President for Research and Graduate Studies in partial fulfillment of the requirements for the degree Doctor of Education.

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ABSTRACT

KNOWLEDGE OF UNITED STATES SUPREME COURT DECISIONS AFFECTING EDUCATION HELD BY SELECTED TENNESSEE PUBLIC SCHOOL PERSONNEL

by

William P. Abegglen

The purpose of this study was to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members; to determine if significant differences existed among these groups in their knowledge of Supreme Court decisions affecting education; and to determine if significant differences existed within each group depending on years of experience in education and level of education.

Five hundred randomly selected subjects from the public school systems in Tennessee were asked to indicate their knowledge of Supreme Court decisions affecting education by completing the survey instrument, Supreme Court Decisions Impacting on Education. This instrument measured respondents' knowledge of Supreme Court decisions in five areas: (1) student rights; (2) employee rights; (3) church-state relationships; (4) race, language, and sex discrimination; and (5) school finance and organization. A total of 241 (48.2%) usable responses were returned.

The data revealed that there was a general lack of knowledge of Supreme Court decisions affecting education. Significant differences were found to exist among the four groups in all areas except that of race, language, and sex discrimination.

Superintendents scored significantly higher than teachers and board members in knowledge of Supreme Court decisions in the area of student rights. Superintendents and principals scored significantly higher than teachers in the area of employee rights. Superintendents scored significantly higher than all other groups in the area of church-state relationships. In the area of school finance and organization, superintendents and principals scored significantly higher than teachers. On overall knowledge of Supreme Court decisions affecting education, superintendents and principals scored significantly higher than teachers and board members.

Years of experience in education was not found to be a significant factor within any of the four groups. Level of education was found to be a significant factor among superintendents. Superintendents with either a doctoral degree or a Master's degree plus additional coursework scored

significantly higher than those with a Master's degree or an Education Specialist degree. Level of education was not found to be a significant factor within any other group.

DEDICATION

This study is dedicated to the four people who are most responsible for making me who I am.

To my mother, Marge Abegglen, who instilled in me a love of learning, a sense of values, and an appreciation of the value of a dollar.

To my father, Paul Abegglen, who taught me to respect the worth and dignity of all individuals and to be honest with myself and with others.

To Malinda Franklin Preston who taught me that work is honorable and satisfying.

To my wife, Sue Richardson Abegglen, who has given me support, encouragement, and love when I have needed it most.

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A word of appreciation is extended to the faculty of the Department of Supervision and Administration of East Tennessee State University for their assistance and support. The writer wishes to especially thank the members of his Doctoral Committee: Dr. William T. Acuff, Dr. J. Howard Bowers, Dr. Charles W. Burkett, and Dr. Harold Whitmore. Two members of the committee who retired prior to the completion of this study are also appreciated, Dr. Gem Kate Greninger and Dr. Albert C. Hauff. The time and efforts of all these special people are deeply treasured.

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Sincere gratitude is also extended to Dr. Perry A. Zirkel who provided the original impetus for this study and who permitted the adoption of his "Test on Supreme Court Decisions Affecting Education" design. Had the writer not become familiar with Dr. Zirkel's work in this area of study, this project would never have become a reality.

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CHAPTER 1

Introduction

Since education is not mentioned in the United States Constitution, it is presumed to be a function of the states by virtue of the Tenth Amendment. However, educational practices, policies, and procedures must conform to the principles stated in the Constitution. To assure this conformity the courts have played an increasingly significant role in establishing legal principles which serve as guidelines for the daily operation of our nation's public schools.

Since 1950 there has been a marked increase in the number of case and statutory laws pertaining to the governance of public schools. Federal, state, and local governing bodies have all introduced legislation on their respective levels to provide guidelines for the operation of the schools. It is the responsibility of the courts to provide assurances that this legislation is in compliance with the United States Constitution.

John C. Hogan (1974) outlines the history of the American court system's evolving role in matters pertaining to education. He identified five stages of evolution. The first stage was that of judicial laissez faire, during which the courts generally ignored education. This stage lasted from 1789 until 1850. Hogan identified the second stage as that of state control of education. In this period, from 1850 to 1950, the state courts claimed that education was exclusively a matter for the states. During this stage there was little federal court involvement in

matters pertaining to education. The third stage in Hogan's outline was the reformation stage, which began in 1950 and continues to the present. In this stage the federal court system, and particularly the United States Supreme Court, became aware that many of the educational policies and practices developed during the second stage were not in compliance with federal constitutional requirements. The fourth stage of evolution is that of "education under supervision of the courts" which is concurrent with the reformation stage. Since the federal courts have become aware of the many educational policies and practices that contradict federal requirements, they have "begun to expand the scope of their powers over the schools." In this stage the federal government, and especially the United States Supreme Court, has been more assertive in its control over educational administration, organization, and programs. The fifth stage, the stage of "strict construction," began with the landmark decision in school finance, the San Antonio Independent School District v. Rodriguez case of 1973. In this decision the Supreme Court declared that education is not among the rights guaranteed by our federal constitution (pp. 5-14).

Jackson M. Drake stated that from 1789 to 1888 there were only three decisions rendered by the United States Supreme Court that resulted in any significant changes in the administration of schools. In the sixty years that followed (1889 through 1948) there were twenty-two decisions handed down that had implications for educational administration. Since 1949 there has been a substantial increase in the number of Supreme Court cases relating to the governance of schools (ERIC ED 168 192).

Statement of the Problem

The problem of this study was to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members in Tennessee.

Significance of the Study

The legal principles established by the United States Supreme Court should be of interest to all individuals involved in the educational enterprise, whether at the instructional, policy-making, or policy-implementing level. Because of the ever-increasing number of lawsuits being filed against public school teachers, administrators, and board members, it is a matter of paramount importance that these individuals be knowledgeable in matters relating to school law. If teachers, administrators, and board members are to avoid litigation they must be familiar with and implement only those policies and practices which are in compliance with the law. Unfortunately, school leaders are often not very knowledgeable about legal matters pertaining to education (Zirkel, 1978c).

The findings of this study should provide insight into the existing state of knowledge of Supreme Court decisions affecting education and provide direction for removing some of the deficiencies which may exist. The findings might also indicate the need for prescriptive measures to be implemented in preservice and in-service programs for public school teachers, administrators, and board members.

Research Hypotheses

Given the statement of the problem and the findings from the review of related literature, the following hypotheses were formulated:

1. There will be a significant difference among public school teachers, principals, superintendents, and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of student rights and responsibilities.

2. There will be a significant difference among public school teachers, principals, superintendents, and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of employee rights and responsibilities.

3. There will be a significant difference among public school teachers, principals, superintendents, and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of church and state relationships.

4. There will be a significant difference among public school teachers, principals, superintendents, and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of race, language, and sex discrimination.

5. There will be a significant difference among public school teachers, principals, superintendents, and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of school district finance and organization.

6. There will be a significant difference among public school teachers, principals, superintendents, and board members in the overall

knowledge demonstrated about United States Supreme Court decisions affecting education.

7. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school teachers with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

8. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school principals with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

9. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school superintendents with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

10. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school board members with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

11. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school teachers with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree

plus additional coursework, an Education Specialist's degree, and a doctoral degree.

12. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school principals with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

13. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school superintendents with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

14. There will be a significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school board members with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

Limitations

The following limitations were imposed on this study:

1. The amount of knowledge of Supreme Court decisions affecting education actually possessed by those responding to the survey was limited to those cases measured by the Supreme Court Decisions Impacting on Education instrument.

2. The participants in the study were limited to randomly selected teachers, principals, superintendents, and board members in public school systems within the state of Tennessee.

3. The items included in the instrument were limited to United States Supreme Court cases and did not deal with decisions handed down by lower courts.

4. The items included in the instrument were limited to Supreme Court decisions affecting public elementary and secondary schools.

Assumptions

The following assumptions were considered to be pertinent to this study:

1. The Supreme Court Decisions Impacting on Education instrument (Appendix B) was an instrument which provided an accurate measure of the respondents' knowledge of United States Supreme Court decisions affecting education.

2. The responses of the public school teachers, principals, superintendents, and board members surveyed were based on the respondents' true knowledge of landmark Supreme Court decisions affecting education.

3. There was a difference in the levels of knowledge of United States Supreme Court decisions affecting education among the different groups of respondents.

Definitions of Terms

Parens patriae

The term applied to the sovereign power of the government as guardian over incompetent persons, such as minors and the mentally insane.

Literally, the term means "parent of the country."

Per curiam

An opinion concurred in by all the members of the court, but without disclosing the name of any particular justice as its author. Literally, the term means "by the court."

Public school personnel

In this study the term "public school personnel" is operationally defined as including public school teachers, principals, superintendents, and board members.

Organization of the Study

Chapter 1 contains the introduction, the statement of the problem, the significance of the study, the research hypotheses, the limitations, the assumptions, the definitions of terms and the organization of the study.

Chapter 2 contains the review of the literature.

Chapter 3 contains a description of the design and procedures used in the study.

Chapter 4 contains an analysis of the data gathered in the study.

Chapter 5 contains the findings and recommendations. A brief summary of the study is presented.

CHAPTER 2

Review of the Literature

Introduction

The literature related to the legal aspects of education and the impact of the United States Supreme Court in matters relating to education is reviewed in this chapter. The first section of the chapter includes a review of the literature regarding the need for those involved in the educational process to become more knowledgeable of their legal rights and responsibilities. Further, this section examines the status of teacher education programs with regard to their instruction in matters of the law and its impact on educational issues.

Section two presents an examination of the literature with regard to the five areas of Supreme Court decisions which impact on educational issues. The five areas identified are as follows: (a) student rights and responsibilities; (b) employee rights and responsibilities; (c) church and state relationships; (d) race, language, and sex discrimination; and (e) school district finance and organization.

In conducting this review of the literature, a variety of sources, including, but not limited to, the following, were used:

1. Educational Resources Information Center.
2. Education journals.
3. Textbooks on educational law.
4. United States Constitution.
5. United States Reports.

6. Supreme Court Reporter.

7. Federal Supplement.

Education and Law: A Growing Concern

Since the case of Brown v. Board of Education of Topeka 347 U.S. 483 (1954), there has been a marked increase in the number of court decisions involving education; and there is no reason to expect that judicial and legislative intervention in the educational enterprise will diminish in the near future. McCarthy (1976) claimed that since the mid-1950's the

> legislatures and courts have reshaped public educational policy. The increasing public awareness of the role of law in all aspects of society and the growing complexity of the educational enterprise have catapulted teachers into litigation to an unprecedented degree. As this trend shows no signs of diminishing in the near future, teachers need to become more intelligent about the legal facets of their jobs. (p. 9)

The potential for litigation is a reality with which educators of today must be prepared to cope. This potential stems from several factors. First, the public has become more litigation-minded. It is not at all uncommon for aggrieved individuals to seek relief in the judicial system. Whereas, at one time in our nation's history, there was a reluctance to pursue litigation, that reluctance appears to have significantly diminished.

Secondly, the fact that such a large number of individuals are involved in the educational process increases the potential for legal

difficulties. When one considers that nearly 45 million students are being taught by approximately 2.5 million teachers who are under the direction of 175,000 administrators and supervisors and employed by over 100,000 school board members, it becomes evident that the possibility for a large number of lawsuits exists.

A third factor in the ever-increasing potential for litigation is that essentially every educational decision seems to contain a legal ingredient. Decisions involving corporal punishment, searching students' lockers, dismissing teachers, negotiating teachers' contracts, placing nativity scenes on school grounds, and a myriad of other such decisions all must be weighed against the legal ingredient.

In discussing the need for educators to be informed about legal matters pertinent to education Leipold and Rousch (1964) said, "All school persons--school board members, superintendents, principals, teachers, janitors, bus drivers, students--are all directly concerned. Yet the sum total of knowledge of this subject among these groups is limited" (p.i).

Nolte (1978) offered three reasons educators need to be informed about the legal aspects of teaching. He said that (a) teachers are involved in an increasing number of lawsuits, (b) the typical teacher preparation program does not adequately provide information about legal rights and liabilities, and (c) the court system has dramatically changed the teaching profession by virtue of its decisions, especially in matters pertaining to students' rights.

Hazard, Freeman, Eisdorfer, and Tractenberg (1977) pointed out that in recent decades the judicial and legislative branches have increased

their involvement in the schooling process. In describing the proliferation of judicial interventions into the field of education Hazard et al. (1977) stated that

> what once may have been professional decisions now tend to be judicial decisions. The traditional judicial reluctance to move into the substance and processes of school operations has evolved into a more aggressive posture reflecting the courts' concern for basic constitutional rights of teachers and pupils. (p. 2)

In the introduction of their book Gatti and Gatti (1972) stated that "there are many legal problems with which an educator must deal . . . . And there will be more" (p. 9). These two facts of educational life have created a growing concern among teacher educators about the need to make those pursuing careers in education more knowledgeable of their legal rights and responsibilities.

Hazard et al. (1977) noted that the law makes its presence felt at every level of the public school enterprise. "Board members, administrators, supervisors, teachers, student teachers, and other preservice professionals of all kinds work daily in a setting bound by the constraints and duties imposed by court rulings, statutory mandates, and agency prescriptions" (p. 3). A working knowledge of the parameters of these rulings, mandates and prescriptions thus becomes of paramount importance to educators who are expected to carry them out.

Hazard et al. (1977) further cautioned:

> The traditional notion that schools offered their wares to pupils and parents on a take-it-or-leave-it basis is no longer tenable. The clients of schooling have turned to the law for both a sword

> and a shield. Decisions by school boards, administrators, and teachers are challenged by pupils and other school clients. As these challenges escalate into lawsuits and legislation, the traditional relationships among the parties change. Parents seem less willing to accept school decisions about their children; pupils are less inclined to accept the school regimen as the gospel. This growing skepticism and articulate challenge to school policies and practices is healthy; our increasing reliance on the law to "cure" educational ailments may not be.
>
> Teachers play a sensitive role in schooling and should be well informed about their rights, duties, and liabilities and those of the pupils. The price of ignorance about the law is frightfully high. Aside from the economic cost of school lawsuits, the hostility and alienation generated in them interfere with effective schooling. As a seedbed for young minds, the schools surely should be one social institution in which law, fairness, and equity prevail. (p. 6)

With the increase of legislative and judicial intervention into the educational enterprise there have been and will continue to be a number of significant changes in educational policy, procedures, and practices. Hazard et al. (1977) concluded:

> The preparation of professional personnel, the teacher/learner relationships, the structures and procedures of schooling are increasingly affected by the courts, the legislatures, and government agencies at the state and federal levels. Teachers and administrators confront the law in their professional roles and need to understand the implications and consequences of legal and

legislative mandates on the pupils and themselves. (p. 56)

Thus, the literature supports the notion that there is growing concern that those involved in educating our nation's youth need to become more knowledgeable of their legal rights and responsibilities. As the judicial and legislative branches expand their intervention in the schooling process, the awareness and knowledge of legal issues possessed by educators need to expand accordingly. Unfortunately, this has not been the case. Many writers in the area of school law have expressed the belief that the preparation programs for educators are not adequately informing teachers of their legal rights, duties, and responsibilities.

McCarthy (1976) concluded that

> there is little justification for institutions of higher education to graduate aspiring teachers without offering them some formal exposure to legal principles affecting their jobs. Presently teachers can even receive advanced degrees from most institutions . . . and never take a course in school law. This posture destines educators to have reform measures thrust upon them by outside forces. Therefore, a crucial need exists to reevaluate teacher preparation programs and ensure that they incorporate the legal issues that have become an integral part of the teacher's role today. (p. 5)

Van Geel (Simpson, 1975) expressed that, while it was not the intent of colleges of education to transform education students into lawyers, increased exposure to matters of law impacting on the educational process could increase educators' awareness of and help them more effectively deal with some of the legal issues involved in education. Simpson was

more forceful in his discussion of the same topic. He claimed that it is "a case of institutional negligence to let any person go out and become a teacher or administrator without some fundamental knowledge of law" (Simpson, 1975, p. 42).

Hazard et al. (1977) cautioned against the folly of assuming that well-intended, professional-minded school personnel will be able to avoid litigation. "Their awareness of the legal implications of their work is important both to their professional role and to the pupils and parents they serve" (p. 3).

Following a discussion of the evolution of the intervention of the courts into the realm of schools and schooling, Campbell, Cunningham, Nystrand, and Usdan (1975) concluded that the courts' involvement in areas pertinent to school governance will continue to grow. In light of this growing involvement educators need to find more efficient means of becoming and remaining knowledgeable of legal implications for education.

In calling for the inclusion of instruction in the area of school law in teacher preparation programs, Hazard et al. (1977) emphasized:

> Professional preparation programs generally do not adequately inform teachers, administrators, and specialists on matters of law; the concentration on pedagogy and academic content overlooks the impact of legislation and the legal consequences impinging on the school's mission . . . . Schools are, indeed, creatures of law; and to the extent school professionals are not informed of their legal rights, duties, and responsibilities, the schooling process is vulnerable to intervention by the courts. Preservice preparation of educational personnel must include appropriate

instruction in significant legal concepts so that the proper relations among the law, teachers, pupils, and schooling can be respected and turned to the benefit of both producers and consumers. (p. 56)

The Supreme Court and Education

The Constitution of the United States does not specifically address the topic of schools or education. Therefore, by virtue of the Tenth Amendment, education is generally considered a function of the states. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (United States Constitution, Amendment Ten). Although education is a state function, a state's school code and local school policies, procedures, and practices must comply with the Constitution. In those instances in which they do not, the likelihood of litigation increases.

Article III, Section 1 of the Constitution of the United States established the Supreme Court and provided for the creation of other courts by acts of Congress. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish" (United States Constitution, Article III, Section 1).

Generally speaking, the Supreme Court refrains from hearing a case unless a substantial federal issue is involved. "The issues in such cases touch upon rights guaranteed by the federal constitution or affected by federal legislation" (Hazard, 1978, p. 8). Nonetheless, the

Supreme Court has decided a number of education cases in recent years. Reutter (1982) offered a reason for the burgeoning of Supreme Court intervention in education matters: "Partly, this has been a reflection of the post-World War II accent on civil rights and liberties" (p. 2).

Hazard et al. (1977) noted that federal judicial involvement in education is usually based on one of two constitutional principles,

> (a) the "general welfare" clause (Article I, section 8 of the United States Constitution), which authorizes congressional action on behalf of the people, and (b) the protection of citizens under the federal constitution, particularly the First, Fifth, and Fourteenth Amendments. (p. 6)

Five areas of Supreme Court decisions affecting education have been identified. Below is a brief examination of the landmark Supreme Court decisions in each of these areas. The five areas discussed are: (a) student rights and responsibilities; (b) employee rights and responsibilities; (c) church and state relationships; (d) race, language, and sex discrimination; and (e) school district finance and organization.

Student Rights and Responsibilities

Historically, education in the United States has operated under the doctrine of in loco parentis. Authority delegated to school officials through this doctrine has allowed school officials to make, enforce, and interpret the rules of school governance without interference or intervention by the courts. Presumably, if school officials acted as a reasonable parent would act in a given situation, then their actions were beyond judicial control (Ringenberger, 1981).

Zirkel (1978b) explains the earlier reluctance of the United States Supreme Court to interfere in school matters related to the rights and responsibilities of students as being "the strong belief of the judiciary in the American tradition of local control over the schools" (p. 32). Even as recently as 1968 the Court stated that "public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems" (Epperson v. Arkansas, 393 U.S. 104, 1968).

Since 1943, however, the courts have been giving increased attention to the rights of children versus those of state and local governments and their agents. The court system's re-examination of the doctrine of in loco parentis led to an emerging interest in protecting fundamental rights against government encroachment. Although the principle of in loco parentis remains, it has undergone considerable transformation in its application in recent years.

The framers of the United States Constitution considered individual rights so central that the Constitution had to be amended ten times before it could be ratified by the states. These ten amendments, known collectively as the Bill of Rights, were intended to protect citizens' fundamental liberties from intervention and interference by government authorities (Ringenberger, 1981). In the case of In re Gault (1967), the United States Supreme Court held that these constitutional guarantees applied not only to adults, but to juveniles as well.

Jacobson v. Massachusetts 197 U.S. 11 (1905). Two of the earliest United States Supreme Court decisions affecting education in matters relating to student rights and responsibilities involved the issue of mandatory vaccination. In Jacobson v. Massachusetts (1905), the defendant claimed that the Massachusetts statute authorizing local boards of health to institute compulsory vaccination programs denied him his liberty as secured by the Fourteenth Amendment. The Supreme Court recognized the authority of the state to enact such a statute, referring to it as a "police power" of the state. "According to settled principles," the United States Supreme Court opinion reads, "the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and public safety" (Jacobson v. Massachusetts, 25 S.Ct. 361, 1905). The Supreme Court held that a law mandating compulsory vaccination in order to protect the public health and that does not require the participation of those whose health does not permit such vaccination is constitutional. In the words of Mr. Justice Harlan, "Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution" (Jacobson v. Massachusetts, 25 S.Ct. 363, 1905).

Zucht v. King, 260 U.S. 174 (1922). Citing the Jacobson decision as precedent, the Court declared, in Zucht v. King (1922), that it is within the police power of a state to enact a statute providing for compulsory vaccination. In Zucht, a student challenged a city ordinance that provided that no individual could attend a public school or other place

of education without first having presented a certificate of vaccination. It was the student's contention that such an ordinance was a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Court concluded that such a law is indeed constitutional:

> City ordinances making vaccination a condition to attendance at public or private schools and vesting broad discretion in health authorities to determine when and under what circumstances the requirement shall be enforced are consistent with the Fourteenth Amendment and, in view of prior decisions, a contrary contention presents no substantial constitutional question. (Zucht v. King, 260 U.S. 174, 1922)

Minersville School District v. Gobitis, 310 U.S. 586 (1940). In 1940 the United States Supreme Court concluded that a regulation requiring students and teachers to salute and pledge allegiance to the American flag was constitutional, even if to do so violated an individual's religious convictions.

> A state regulation requiring that pupils in the public schools, on pain of expulsion, participate in a daily ceremony of saluting the national flag, whilst reciting in unison a pledge of allegiance to it . . . [is] held within the scope of legislative power, and consistent with the Fourteenth Amendment . . . . (Minersville School District v. Gobitis, 310 U.S. 586, 1940)

In the Minersville School District v. Gobitis (1940) opinion, Mr. Justice Frankfurter made two statements which reflect the deference that the Court gave to local control of education. First. " . . . the

courtroom is not the arena for debating issues of educational policy" (Minersville School District v. Gobitis, 310 U.S. 586, 1940). And,

> It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances. So to hold would in effect make us the school board for the country. (Minersville School District v. Gobitis, 310, U.S. 586, 1940)

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). These two remarks are of significance because only three years later in West Virginia State Board of Education v. Barnett (1943), the Court reversed its earlier decision, holding that compulsory flag salute programs violated the First and Fourteenth Amendments. Mr. Justice Jackson delivered the opinion of the court:

> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control. (West Virginia State Board of Education v. Barnette, 319 U.S. 642, 1943)

The protection secured by the First Amendment includes the protection of expressions of political opinion and symbolic speech. The refusal to participate in a flag salute and pledge program is such an expression within the meaning of this Amendment.

Addressing the question of whether compulsory flag salute and pledge programs violate Fourteenth Amendment guarantees Mr. Justice Jackson concluded:

> The Fourteenth Amendment, as now applied to the States, protects the citizens against the State itself and all of its creatures--Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. (West Virginia State Board of Education v. Barnette, 319 U.S. 637, 1943)

The Fourteenth Amendment protects citizens from denial of First Amendment rights absent a "present and substantial danger which the state may lawfully protect. The mere passive refusal to salute the flag does not create a danger to the state such that the First Amendment rights to belief and expression may be impaired" (Zirkel, 1978b, p. 37).

Taylor v. Mississippi, 319 U.S. 583 (1943). In a related case, Taylor v. Mississippi (1943), the Court ruled that the Fourteenth Amendment prohibits a state statute that provides for the punishment of individuals who, for religious reasons, urge and advise citizens to cease saluting national and state flags. Mr. Justice Roberts delivered the opinion:

> In West Virginia State Board of Education v. Barnette (1943) . . . the court has decided that a state may not enforce a regulation requiring children in the public schools to salute the national emblem. The statute here in question seeks to punish as a criminal one who teaches resistance to government compulsion to salute. If

> the Fourteenth Amendment bans enforcement of the school regulation, a fortiori it prohibits the imposition of punishment for urging and advising that, on religious grounds, citizens refrain from saluting the flag. (Taylor v. Mississippi, 319 U.S. 588, 589, 1943)

In re Gault, 387 U.S. 1 (1967). Although not originating in a school setting, In re Gault (1967) is regarded as a landmark decision in Supreme Court decisions affecting education. The Gault decision is often considered the turning point in the Court's interpretation of the applicability of constitutional safeguards to minors. The Gault opinion clearly recognized that children are "persons" and are entitled to protection of constitutional liberties. Mr. Justice Fortas stated that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (In re Gault, 387 U.S. 13, 1967).

Because fifteen-year old Gerald Gault was denied procedural due process during his juvenile court proceedings, he challenged the constitutionality of the state juvenile court statute. In deciding in favor of Gault, the Supreme Court determined that, when faced with a potential loss of liberty, even a minor is entitled to the procedural safeguards afforded by the Due Process Clause of the Fourteenth Amendment. If a minor's rights are to be abridged or taken away, he must be provided the following constitutional safeguards of due process:

1. A notice of charges.
2. A notice of right to legal counsel.
3. The right of confrontation and cross-examination of complainant.
4. A notice of privilege against self-incrimination.

5. Access to sworn testimony from complainant and witnesses.

6. Access to a transcript of proceedings.

7. The right of appellate review.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). In addition to the protection of procedural due process, the Supreme Court has determined that minors also are guaranteed their First Amendment right of freedom of speech. In Tinker v. Des Moines Independent Community School District (1969), the Court declared it unconstitutional to suspend students for the peaceful wearing of arm bands as an expression of symbolic speech unless it can be shown that interference with the educational process did or would occur. The conduct of the students involved in this silent protest of American involvement in Vietnam was found to be within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. "A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments" (Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 1969).

The Court concluded that the students' exercise of their First Amendment rights collided with the school authorities' prohibition of the wearing of armbands. The Court explained that the mere anticipation or apprehension of a disturbance did not supersede the students' right of expression. Mr. Justice Fortas, speaking for the majority, said:

> First Amendment rights, applied in 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. (Tinker v. Des Moines Independent Community School District, 393 U.S. 506, 1969)

The District Court had dismissed the complaint in the Tinker case, upholding "the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline" (Tinker v. Des Moines Independent Community School District, 393 U.S. 505, 1969). The Court of Appeals affirmed the District Court's decision. Thus, the United States Supreme Court overruled the two lower decisions. Mr. Justice Black, in his dissenting remarks, concluded:

> I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent. (Tinker v. Des Moines Independent Community School District, 393 U.S. 526, 1969)

Goss v. Lopez, 419 U.S. 565 (1975). The Fourteenth Amendment to the United States Constitution requires that no person shall be deprived of life, liberty, or property without due process of law. In recent years the Court has attempted to ascertain whether these due process procedures were applicable to the education environment. The judgment rendered in Goss v. Lopez (1975) was that suspensions ordered and statutes permitting suspensions, absent provisions for notice and a hearing, are

unconstitutional. By a five-to-four margin the Supreme Court ruled that students facing suspensions of ten days or less have "property" and "liberty" interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment.

Although there is no provision in the United States Constitution for free public education, the fact that a state has undertaken to provide its children with such an education creates a constitutionally protected property interest. Since education is a constitutionally protected property interest, a student's education cannot be denied because of misconduct without adherence to the minimum procedures required by due process. Speaking for the majority Mr. Justice White wrote:

> The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause. (Goss v. Lopez, 419 U.S. 574, 1975)

The Due Process Clause's prohibition against arbitrary deprivation of a liberty interest is applicable in the Goss case, too. The Supreme Court concluded that students have a "liberty" interest in their reputation as well as their future educational and employment opportunities. "The State's claimed right to determine unilaterally and without process whether that misconduct has occurred immediately collides

with the Due Process Clause's prohibition against arbitrary deprivation of liberty" (Goss v. Lopez, 419 U.S. 565, 1975). "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, the minimal requirements of the Clause must be satisfied" (Goss v. Lopez, 419 U.S. 574, 1975).

The Court emphasized that they thought that in school suspensions only minimal procedures of due process were required. They stopped short of requiring school authorities to afford students the opportunity to secure counsel, to confront and cross-examine complainants, or to call witnesses on their own behalf (Goss v. Lopez, 419 U.S. 583, 1975). The Court held that students to be suspended for up to ten days must be accorded the following due process procedures prior to the suspension: (1) oral or written notice of the charges; (2) an explanation of the evidence the authorities have; and (3) a hearing, at which time the student is allowed to present his or her version of the misconduct in question.

> There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. (Goss v. Lopez, 419 U.S. 582, 1975)

The decision of the Court in Goss further provided that if a student's continued presence at the school endangers persons, or property,

or threatens to disrupt the academic process, suspension could precede the required procedures. If immediate removal from the school is necessary, the notice and hearing should follow within a reasonable time.

Wood v. Strickland, 420 U.S. 308 (1975). Since 1871 individuals who contend that their civil rights have been violated by an agent of the state have had a right to seek redress in the judicial system under a statute known as Section 1983. Over a century later, in Wood v. Strickland (1975), the Supreme Court addressed the question of personal liability of school administrators and school board members for violation of students' rights in a case involving the expulsion of three students for "spiking" the punch at an extracurricular meeting held at the school.

On the basis of common-law tradition and public policy, the Court held that school officials are entitled to qualified immunity from liability for damages under Section 1983. This qualified immunity is dependent upon two elements of good faith. First, to retain immunity from liability, school officials must act without "the malicious intention to cause a deprivation of constitutional rights or other injury to the student" (Wood v. Strickland, 420 U.S. 322, 1975). Secondly, a school official is "not immune from liability for damages under Section 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected . . ." (Wood v. Strickland, 420 U.S. 322, 1975). Any action "with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights . . . cannot

reasonably be characterized as being in good faith" (Wood v. Strickland, 420 U.S. 322, 1975) and hence is denied immunity. If school officials violate a student's constitutional rights, whether through ignorance or through disregard for the law, they forfeit their immunity and are liable.

Mr. Justice White, writing the majority opinion, stated the need for granting this qualified immunity:

> We think there must be a degree of immunity if the work of the schools is to go forward; and however worded, the immunity must be such that public school officials understand that action taken in the good-faith fulfillment of their responsibilities and within the bounds of reason under all the circumstances will not be punished and that they need not exercise their discretion with undue timidity. (Wood v. Strickland, 420 U.S. 321, 1975)

To deny any measure of immunity to school officials would have subjected the decision-making process to intimidation.

Baker v. Owen, 395 F. Supp. 294 (1975). In recent years, courts at various levels have been called upon to consider the constitutionality of statutes empowering school officials to employ corporal punishment. In Baker v. Owen (1975), respondents claimed that a North Carolina statute empowering school authorities to "use reasonable force in the exercise of lawful authority to restrain or correct pupils and to maintain order" (North Carolina, General Statutes Sections 115-146) was unconstitutional on two counts. It was argued that the administration of corporal punishment violated a student's Fourteenth Amendment liberty interest

(discussed above under Goss v. Lopez) and his or her Eighth Amendment protection from cruel and unusual punishment.

The United States Supreme Court affirmed the decision of the District Court, upholding the use of corporal punishment in the schools. The District Court claimed that although there is a Fourteenth Amendment liberty interest in parents' control of their children, the state has a countervailing interest in maintaining order in the schools, including the freedom to use corporal punishment as a means of maintaining that order. However, because of that Fourteenth Amendment liberty interest, in administering corporal punishment school officials must accord students with minimal due process procedures. These procedures include the following protections:

> (1) Except for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience, corporal punishment may never be used unless student is informed beforehand that specific misbehavior will occasion its use and, subject to some exception, it should never be employed as first line of punishment for misbehavior, but should be used only after attempt has been made to modify behavior by some other means. (Baker v. Owen, 395 F. Supp. 295, 1975)

(2) "Teacher or principal must punish corporally in presence of second school official, who must be informed beforehand and in student's presence of reason for punishment . . ." (Baker v. Owen, 395 F. Supp. 295, 1975).

(3) "School official who has administered corporal punishment to student must provide child's parent, upon request, written explanation of his reasons and name of second official who was present" (Baker v. Owen, 395 F. Supp. 295, 1975).

The District Court held that the administration of corporal punishment to the student in question in this case did not constitute cruel and unusual punishment. Therefore, the respondents' claim that the student's Eighth Amendment rights were violated was denied.

Ingraham v. Wright, 430 U.S. 651 (1977). In the emotionally-charged case of Ingraham v. Wright (1977), two Florida junior high school students alleged that they and other students had been subjected to corporal punishment in violation of their constitutional rights. Two questions concerning the use of corporal punishment in public schools were presented: (1) Does the implementation of corporal punishment, as a means of maintaining discipline in the schools, constitute cruel and unusual punishment as prohibited by the Eighth Amendment? and, (2) Does the practice of corporally punishing students require prior notice and hearing to comply with the Due Process Clause of the Fourteenth Amendment?

Even though the evidence showed that the paddlings given to the two students were exceptionally harsh, the Supreme Court concluded that the Eighth Amendment's cruel and unusual punishment clause is inapplicable to disciplinary corporal punishment in schools. The opinion of the Court, written by Mr. Justice Powell stated:

> An examination of the history of the (Eighth) Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes. We adhere to this long-standing limitation and hold that the Eighth Amendment does not apply to the paddling of

children as a means of maintaining discipline in public schools. (Ingraham v. Wright, 430 U.S. 664, 1977)

In their examination of the question regarding the applicability of the Due Process Clause of the Fourteenth Amendment, the Court held that that clause does not require notice and hearing prior to inflicting corporal punishment. Minimal due process procedures were determined to be sufficient safeguards. While recognizing that corporal punishment in the public schools does involve a student's liberty interest, the Court concluded that "the Due Process Clause does not require notice and a hearing prior to the imposition of corporal punishment in the public schools, as that practice is authorized and limited by the common law" (Ingraham v. Wright, 430 U.S. 682, 1977).

While denying the applicability of the Eighth and Fourteenth Amendments in this case, the Court pointed out that students are protected against excessive or unjustified corporal punishment by the opportunity to file civil or criminal complaints against school officials. "To the extent that the force is excessive or unreasonable, the educator in virtually all States is subject to possible civil and criminal liability" (Ingraham v. Wright, 430 U.S. 661, 1977).

> In those cases where severe punishment is contemplated, the available civil and criminal sanctions for abuse . . . afford significant protection against unjustified corporal punishment. Teachers and school authorities are unlikely to inflict corporal punishment unnecessarily or excessively when a possible consequence of doing so is the institution of civil or criminal proceedings against them. (Ingraham v. Wright, 430 U.S. 678, 1977)

Mr. Justice White delivered the opinion of the four dissenting justices in Ingraham v. Wright (1977), and argued that the Eighth Amendment should apply to students because to rule otherwise is to afford criminals greater constitutional safeguards than those granted to misbehaving juveniles. If a criminal were to receive the punishment inflicted on the two junior high students in question in this case there is little doubt that the Eighth Amendment would have been deemed applicable. Mr. Justice White offered the following observations regarding the majority's opinion:

> By holding that the Eighth Amendment protects only criminals, the majority adopts the view that one is entitled to the protections afforded by the Eighth Amendment only if he is punished for acts that are sufficiently opprobrious for society to make them "criminal". (Ingraham v. Wright, 430 U.S. 691, 1977)

In response to the opinion of the majority that students were adequately protected against excessive corporal punishment or denial of due process because they have opportunity to pursue civil and criminal action against school authorities, Mr. Justice White said:

> The majority's conclusion that a damages remedy for excessive corporal punishment affords adequate process rests on the novel theory that the State may punish an individual without giving him an opportunity to present his side of the story, as long as he can later recover damages from a state official if he is innocent. (Ingraham v. Wright, 430 U.S. 696, 1977)

Employee Rights and Responsibilities

Like all other citizens, school employees receive the protections granted by the United States Constitution. Of particular significance are the individual rights protected by the first ten amendments to the Constitution. Teachers, like students, do not shed their constitutional rights at the schoolhouse gate.

Although all United States citizens are guaranteed certain rights, these rights are seldom viewed by the courts as absolutes. In any consideration of constitutional rights a proper "balance" is sought. Zirkel (1978b) says that the Supreme Court "will continue to wrestle with the balance between the employee's individual right and the interest of the educational establishment as represented through the state" (p. 48). In cases involving employee rights,

> whether the rights of a teacher will be held to be constitutionally protected will depend in part on the weight given the teacher's expressed right, as against the reasonableness of state action needed to operate and manage the schools efficiently and effectively. (Zirkel, 1978b, p. 47)

Nolte (1978) stated that the student's right to learn is broader and deeper than the teacher's right to teach.

Meyer v. Nebraska, 262 U.S. 390 (1923). In Meyer v. Nebraska (1923), the Supreme Court ruled that a state law which prohibited the teaching of a modern foreign language to a student who had not yet completed the eighth grade was unconstitutional. The Court determined that such an action by the state was an invasion of the guarantees of the Fourteenth

Amendment. The Fourteenth Amendment protects individuals from arbitrary or unreasonable state action impairing life, liberty, or property interests.

In overturning the decision of the Supreme Court of the State of Nebraska, the United States Supreme Court ruled that such a law prohibiting the teaching of a foreign language to students in kindergarten through eighth grade exceeded the power of the state. The Court held that

> the right to choose and pursue a given legitimate vocation is within the rights guaranteed by the Fourteenth Amendment . . . . Imparting knowledge in a foreign language is not inherently immoral or inimical to the public welfare, and not a legitimate subject for prohibitory legislation. (Meyer v. Nebraska, 262 U.S. 391, 1923)

Mr. Justice McReynolds delivered the opinion of the Court and concluded:

> The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate . . . . But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. (Meyer v. Nebraska, 262 U.S. 402, 1923)

Adler v. Board of Education of the City of New York, 342 U.S. 485 (1952). The question of the constitutionality of loyalty oaths has been the subject of extensive review by the Court. More than a dozen loyalty oath decisions were handed down by the Supreme Court in the twenty years between 1952 and 1971.

> The Court . . . has formulated a doctrine that will strike down as unconstitutional for vagueness any loyalty oath which is unclear and/or difficult for an employee to determine what conduct is covered by the law and what may be regarded as violative of the Fourteenth Amendment. (Zirkel, 1978b, pp. 47-48)

One of the earliest loyalty oath decisions was Adler v. Board of Education of the City of New York (1952). In this case, the Court upheld the constitutionality of the New York City Civil Service statute in question. The statute made "ineligible for employment in any public school any member of any organization advocating the overthrow of the Government by force, violence or unlawful means" (Adler v. Board of Education of the City of New York, 342 U.S. 485, 1952). The law further required the Board of Regents

> (1) to adopt and enforce rules for the removal of any employee who violates or is ineligible . . . (2) to promulgate a list of (proscribed) organizations . . . and (3) to provide in its rules that membership in any organization so listed is prima facie evidence of disqualification for employment in the public schools. No organization may be so listed, and no person severed from or denied employment, except after a hearing and subject to judicial review. (Adler v. Board of Education of the City of New York, 342 U.S. 485, 1952)

Because of the specific provisions of the New York City Civil Service statute, the Court decreed that the void-for-vagueness policy need not be applied in this case. Because the law penalized only knowing membership

and because it provided for a hearing prior to disqualification, it was found to be within the bounds of the Fourteenth Amendment's Due Process Clause.

Wieman v. Updegraff, 344 U.S. 183 (1952). The Adler decision was the exception rather than the rule, for in most other cases the Supreme Court ruled loyalty oaths unconstitutional. In Wieman v. Updegraff (1952), the Supreme Court declared an Oklahoma state employees' loyalty oath unconstitutional because it conditioned state employment on the taking of a loyalty oath based on innocent, as well as knowing, membership in a subversive organization. The Oklahoma loyalty oath excluded individuals from state employment "solely on the basis of membership in such organizations, regardless of their knowledge concerning the activities and purposes of the organizations to which they had belonged" (Wieman v. Updegraff, 344 U.S. 183, 1952).

The Court's decision in Wieman was based on the Due Process Clause of the Fourteenth Amendment.

> To be valid under this clause, a statute must require that those to be penalized have actual knowledge of which organizations are banned and of the actual proscribed purpose of any organization to which they may belong . . . . The Court assumes that the oath penalizes innocent as well as knowing membership . . . . The Court also finds the statute to be an impermissible interference with the First Amendment freedom of association. (Zirkel, 1978b, p. 53)

Shelton v. Tucker, 364 U.S. 479 (1960). An Arkansas law required each teacher in state-supported schools to file an annual affidavit

listing every organization to which he or she had belonged or regularly contributed within the preceding five years. Teachers in the state-supported schools had no tenure and were not covered by a civil service system. The statute thus required Arkansas teachers to disclose information to those who could fire them at the end of any given school year, without notice of the reasons for dismissal or an opportunity for a hearing prior to dismissal. The Supreme Court ruled that the Arkansas statute was invalid because it deprived teachers of their right of associational freedom.

While not denying that the state of Arkansas has a right to investigate the fitness and competence of its teachers, the broad sweep of this statute interfered with associations that have no bearing on teacher fitness, went far beyond what might be a legitimate inquiry, and unconstitutionally impaired the teachers' right of freedom of association. "This First Amendment right of freedom of association is protected from unnecessary or overbroad state interference by the due process clause of the Fourteenth Amendment" (Zirkel, 1978b, p. 56).

Cramp v. Board of Public Instruction of Orange County, 368 U.S. 278 (1961). A Florida statute required every employee of the state and its subdivisions to swear in writing that he had never lent his "aid, support, advice, counsel, or influence to the Communist Party." The statute further required the immediate discharge of any employee who failed to subscribe to such an oath. A teacher refused to sign the statement and challenged the statute, claiming that its meaning was so vague as to deprive him of liberty or property without due process of law.

In overturning the decision of the Florida Supreme Court, the United States Supreme Court declared the statute unconstitutional.

> The meaning of the required oath is so vague and uncertain that the State cannot, consistently with the Due Process Clause of the Fourteenth Amendment, force an employee to take such an oath, at the risk of subsequent prosecution for perjury, or face immediate dismissal from public service. (Cramp v. Board of Public Instruction of Orange County, 368 U.S. 278, 1961)
>
> Mr. Justice Stewart delivered the opinion of the Court:
>
> We think that this case demonstrably falls within the compass of those decisions of the Court which hold that " . . . a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law" . . . . The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution. (Cramp v. Board of Public Instruction of Orange County, 368 U.S. 287, 1961)

Baggett v. Bullitt, 377 U.S. 360 (1964). This class action, brought by members of the faculty, staff, and student body of the University of Washington, sought judgment on the constitutionality of two state statutes requiring the taking of oaths as a condition of employment by the state. A 1931 statute required teachers to swear, by precept and example, to promote respect for the flag and the institutions of the United States and

the State of Washington, reverence for law and order, and undivided allegiance to the Government of the United States. A 1955 statute required each state employee to swear that he or she was not a

> subversive person: that he does not commit, or advise, teach, abet, or advocate another to commit or aid in the commission of any act intended to overthrow or alter, or assist in the overthrow or alteration, of the constitutional form of government by revolution, force, or violence. (Baggett v. Bullitt, 377 U.S. 360, 1964)

Citing the Cramp decision, the Court held that the provisions of the two statutes violated due process since the oaths were unduly vague, uncertain, and broad.

> A State cannot require an employee to take an unduly vague oath containing a promise of future conduct at the risk of prosecution for perjury or loss of employment, particularly where the exercise of First Amendment freedoms may thereby be deterred. (Baggett v. Bullitt, 377 U.S. 360, 1964)

Elfbrandt v. Russell, 384 U.S. 11 (1966). An Arizona act required state employees to take an oath to support the Federal and State Constitutions and state laws. Under a legislative gloss put on the oath, an employee was subject to prosecution for perjury and discharge from office if he "knowingly and willfully" became or remained a member of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having as one of its purposes the overthrow of the government. This Arizona act was challenged by a teacher who refused to take the oath claiming that the meaning of the

oath was unclear and that she could not obtain a hearing in order to have the meaning determined.

The Supreme Court, in a five-to-four decision, overturned the decision of the Arizona Supreme Court and declared that a loyalty oath statute which attaches sanctions to membership without requiring the "specific intent" to further the illegal aims of the organization is unconstitutional.

The Court held that political groups may embrace both legal and illegal aims, and persons may join such groups without embracing the organization's illegal aims.

> Those who join an organization but do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. Laws such as this which are not restricted in scope to those who join with the "specific intent" to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization. (Elfbrandt v. Russell, 384 U.S. 17, 1966)
>
> The due process clause of the Fourteenth Amendment requires that a statute infringing on protected constitutional rights, in this case freedom of political association, be narrowly drawn to define and punish specific conduct constituting a clear and present danger to a substantial interest of the state. Those who join an organization without sharing in its unlawful purpose pose no threat to constitutional government. (Zirkel, 1978b, p. 58)

Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 589 (1967). New York had a complicated network of teacher loyalty laws and regulations. The constitutionality of this network of laws was challenged by a number of faculty members and one nonfaculty employee of the State University of New York. The laws under examination provided for the dismissal of employees of the state educational system who uttered "treasonable or seditious" words, who performed "treasonable or seditious" acts, who advocated or participated in the distribution of written materials supporting violent overthrow of the government, and who belonged to "subversive" organizations.

The Court, by a five-to-four margin, declared that loyalty oath statutes which make membership in an organization sufficient grounds for termination are unconstitutional. To be valid, a loyalty law must be limited to knowing, active members who help to pursue the illegal goals of the subversive organization. Mr. Justice Brennan, in delivering the majority opinion, stated that a "crucial consideration is that no teacher can know just where the line is drawn between 'seditious' and nonseditious utterances and acts" (Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 599, 1967).

In his argument that the loyalty laws were unduly vague and broad, Mr. Justice Brennan further claimed that other provisions of the statutes suffer from vagueness. For example, the provision which bars employment of any person who "by word of mouth or writing wilfully and deliberately advocates, advises, or teaches the doctrine" of forceful overthrow of government is "plainly susceptible of sweeping and improper application. It may well prohibit the employment of one who merely advocates the

doctrine in the abstract without any attempt to indoctrinate others, or incite others to action in furtherance of unlawful aims" (Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 599-600, 1967).

Another subsection of the New York statute required the dismissal of an employee who was involved with the distribution of written material "containing or advocating, advising or teaching the doctrine" of forceful overthrow, and who himself "advocates, advises, teaches, or embraces the duty, necessity, or propriety of adopting the doctrine." Here again, mere advocacy of abstract doctrine is apparently included.

In declaring the various laws unconstitutional, the Court concluded that where "statutes have an overbroad sweep, just as where they are vague, the hazard of loss or substantial impairment of those precious rights may be critical . . ." (Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 609, 1967). The opinion of the Court was based on the First Amendment freedoms of speech and association and the safeguard of due process of law as guaranteed by the Fourteenth Amendment.

Connell v. Higginbotham, 403 U.S. 207 (1971). A Florida teacher was dismissed for her refusal to sign a loyalty oath which stated:

> I do hereby solemnly swear that I will support the Constitution of the United States and of the State of Florida; and that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence.

The dismissed teacher challenged the constitutionality of both clauses of the oath.

The Court determined that a loyalty oath conditioning public employment on the employee's affirmation to support the federal and state Constitutions is constitutionally valid. However, that portion of the oath requiring the employee to swear that he does not believe in the violent overthrow of the federal or state governments is unconstitutional where it provides for dismissal without a hearing. "The second portion of the oath . . . falls within the ambit of decisions of this Court proscribing summary dismissal from public employment without hearing or inquiry required by due process . . . . That portion of the oath, therefore, cannot stand" (Connell v. Higginbotham, 403 U.S. 208-209, 1971). Thus, the statutes' provision for dismissal without a hearing offends the Due Process Clause of the Fourteenth Amendment.

In Cole v. Richardson (1972), Mr. Chief Justice Burger reviewed the Court's path through the loyalty oath maze:

> We have made clear that neither federal nor state government may condition employment on taking oaths that impinge on rights guaranteed by the First and Fourteenth Amendments respectively, as for example those relating to political beliefs . . . . Nor may employment be conditioned on an oath that one has not engaged, or will not engage, in protected speech activities such as the following: criticizing institutions of government; discussing political doctrine that approves the overthrow of certain forms of government; and supporting candidates for political office . . . . Employment may not be conditioned on an oath denying past, or abjuring future, associational activities within constitutional protection; such protected activities include membership in organizations having

> illegal purposes unless one knows of the purpose and shares a specific intent to promote the illegal purpose . . . . And, finally, an oath may not be so vague that "men of common intelligence must necessarily guess at its meaning and differ as to its application, [because such an oath] violates the first essential of due process of law . . . ." Concern for vagueness in the oath cases has been especially great because uncertainty as to an oath's meaning may deter individuals from engaging in constitutionally protected activity conceivably within the scope of the oath. (Cole v. Richardson, 405 U.S. 680-681, 1972)

Slochower v. Board of Higher Education of New York City, 350 U.S. 551 (1956). Two similar cases with seemingly conflicting decisions illustrate the delicacy with which the United States Supreme Court makes its determinations. Section 903 of the New York City Charter provided that a city employee who utilized the Fifth Amendment against self-incrimination to avoid answering, before a legislative committee, a question related to his official conduct, can be discharged from his job. A professor in a college operated by the city was released, without notice or hearing, because he refused to answer questions concerning his membership in the Communist Party. Under New York law, the teacher was entitled to tenure and could be dismissed only for cause and after notice, hearing, and opportunity for appeal. Since the local board already possessed the information requested by the legislative committee, " it cannot be claimed that the Board's action in dismissing the teacher was part of a bona fide attempt to gain needed and relevant information

regarding his qualifications for his position" (Slochower v. Board of Higher Education of New York City, 350 U.S. 551, 1956). The Court thus held that the board's action in dismissing a teacher because of his refusal to answer questions irrelevant to an inquiry into his fitness to teach and without a hearing was unconstitutional.

Beilan v. Board of Public Education, School District of Philadelphia, 357 U.S. 399 (1958). In Beilan v. Board of Public Education (1958), a similar circumstance eventuated in a different decision from the Court. Beilan, a Philadelphia public school teacher, refused to answer his superintendent's questions relating to his Communistic affiliations and activities. The teacher refused to answer even after being warned that the inquiry related to his fitness to teach and that refusal to answer might lead to his dismissal. After a hearing, the Board of Education found that Beilan's refusal to answer the superintendent's questions constituted "incompetency", grounds for discharge under the state tenure law, and discharged him. The teacher claimed that the board's action was unconstitutional.

The Court held that in this case the board of education's discharge of a teacher for failure to answer his superintendent's inquiry concerning his fitness to teach was constitutional.

> The questions petitioner (Beilan) refused to answer were relevant to his fitness and suitability as a teacher, and his discharge was based upon his insubordination and lack of frankness and candor in refusing to answer such questions--not upon disloyalty or any of the activities inquired about . . . . The State Supreme Court held that

"incompetency," within the meaning of the relevant state statute, includes petitioner's "deliberate and insubordinate refusal to answer the questions of his administrative superior in a vitally important matter pertaining to his fitness," and this interpretation is not inconsistent with the Federal Constitution. (Beilan v. Board of Public Education, School District of Philadelphia, 357 U.S. 399-400, 1958)

The essential difference between the Slochower decision and the Beilan decision was the nature of the inquiry. In Slochower's case the questions were not viewed by the Court as related to his fitness to teach; in Beilan's case the questioning superintendent explicitly and consistently warned the teacher that his inquiry was to determine Beilan's fitness to teach.

Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 563 (1968). The board of education dismissed a teacher for writing and publishing in a newspaper a letter criticizing the board's allocation of school funds between educational and athletic programs and the board's methods of informing, or preventing the informing of, the school district's taxpayers of the real reasons additional tax revenues were being sought. At a hearing, the board charged that numerous statements in the letter were false and that publication of the letter was "detrimental to the efficient operation and administration of the schools of the district" and that "the interests of the school required" Pickering's dismissal. The dismissed teacher claimed that the letter was protected by the First and Fourteenth Amendments.

The Supreme Court reversed the decision of the Illinois courts and ruled that the teacher's dismissal was improper. The Court held that

> absent proof of false statements knowingly or recklessly made by him/her, a teacher's exercise of his/her right to speak on issues of public importance, e.g., on the raising and disbursement of funds for education, may not be the basis of his/her dismissal from public employment. (Zirkel, 1978b, p. 60)

The teacher's First Amendment right to freedom of expression was balanced against the State's interest in promoting the efficiency of its public schools. Mr. Justice Marshall delivered the opinion of the Court:

> The public interest in having free and unhindered debate on matters of public importance--the core value of the Free Speech Clause of the First Amendment--is so great that it has been held that a State cannot authorize the recovery of damages by a public official for defamatory statements directed at him except when such statements are shown to have been made either with knowledge of their falsity or with reckless disregard for their truth or falsity. (Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 573, 1968)
>
> In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. (Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 574, 1968)

> Those statements of appellant's which were substantially correct regarded matters of public concern and presented no questions of faculty discipline or harmony; hence those statements afforded no proper basis for the Board's action in dismissing appellant . . . . Appellant's statements which were false likewise concerned issues then currently the subject of public attention and were neither shown nor could be presumed to have interfered with appellant's performance of his teaching duties or the school's general operation. They were thus entitled to the same protection as if they had been made by a member of the general public, and, absent proof that those false statements were knowingly or recklessly made, did not justify the Board in dismissing appellant from public employment. (Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 563-564, 1968)

Epperson v. Arkansas, 393 U.S. 97 (1968). A 1928 Arkansas statute prohibited teachers in any state-supported school to teach or use a textbook that teaches the Darwinian theory of evolution. In this case, a Little Rock high school teacher sought declaratory and injunctive relief challenging the constitutionality of the Arkansas "anti-evolution" statute.

The Court concluded that a law prohibiting the Darwinian theory of evolution was unconstitutional, conflicting with the Establishment Clause of the First Amendment. " . . . the law must be stricken," wrote Mr. Justice Fortas, "because of its conflict with the constitutional prohibition of state laws respecting an establishment of religion or

prohibiting the free exercise thereof" (Epperson v. Arkansas, 393 U.S. 103, 1968).

The Court also stated that a state's right to prescribe the public school curriculum did not include the right to prohibit teaching a particular scientific theory for reasons that run counter to the principles of the First Amendment.

> By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools," Shelton v. Tucker, 364 U.S. 479, 487 (1960). As this court said in Keyishian v. Board of Regents, the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom." (Epperson v. Arkansas, 393 U.S. 104-105, 1968)

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972). The interpretation of tenure laws and dismissal of tenured and nontenured teachers has become an area of concern in employee rights during recent years. The companion cases of Roth and Sindermann illustrate the position of the Court. Roth, a nontenured university teacher was notified that he would not be rehired for the ensuing year. University rules provided that no reason need be given for nonretention of a nontenured teacher. Roth

claimed deprivation of his Fourteenth Amendment rights, claiming infringement of his free speech right (because, he claimed, the true reason for his nonretention was his criticism of the university administration), and infringement of his procedural due process right because of the university's failure to inform him of the basis for its decision not to rehire him. The court ruled that

> the Fourteenth Amendment does not require opportunity for a hearing prior to the nonrenewal of a nontenured state teacher's contract, unless he can show that the nonrenewal deprived him of an interest in "liberty" or that he had a "property" interest in continued employment, despite the lack of tenure or a formal contract. Here the nonretention of respondent, absent any charges against him or stigma or disability foreclosing other employment, is not tantamount to a deprivation of "liberty," and the terms of respondent's employment accorded him no "property" interest protected by procedural due process. (Board of Regents of State Colleges v. Roth, 408 U.S. 564, 1972)

Sindermann had been employed by the Texas college system for ten years under a series of one-year contracts and was without formal tenure rights. After the Board of Regents declined to renew his contract for the ensuing year, without giving him an explanation or prior hearing, Sindermann brought action alleging that the decision not to rehire him was based on his public criticism of the college administration and thus infringed his free speech right, and that the Regents' failure to afford him a hearing violated his right to procedural due process. Although he had no formal tenure rights, Sindermann claimed de facto tenure based on

the language of the college's Faculty Guide and on the guidelines promulgated for the Texas College and University System. These guidelines provide that a teacher with seven years of employment in the system is tenured and can only be dismissed for cause.

The Court declared that Sindermann's public criticism of his college's administration was a constitutionally protected right and could not legitimately be used as the basis for termination of employment. This right not to be discharged for constitutionally protected conduct does not depend on the presence or absence of a contractual or tenure right to employment. The First Amendment prohibits state action which impairs freedom of speech and expression. A person may not be denied a governmental benefit because of his exercise of constitutionally protected rights.

The Court ruled in favor of Sindermann on his claim that the Regents failed to provide him a hearing prior to his dismissal, thus violating his right to due process of law as guaranteed by the Fourteenth Amendment. Although Sindermann had no formal tenure right, his objective expectation of reemployment, based on the college's de facto tenure policy, entitled him to the procedural safeguards of due process before termination of employment. Unlike the Roth decision, Sindermann's objective expectation of tenure creates a "property" interest in continued employment which is protected by the Due Process Clause of the Fourteenth Amendment.

McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976). After serving the city of Philadelphia as a fireman for sixteen

years, appellant McCarthy moved his permanent residence from Philadelphia to New Jersey, resulting in the termination of his employment. A Philadelphia municipal ordinance required employees of the city to reside in Philadelphia. The fireman challenged the constitutionality of the ordinance.

The appellant claimed that the Philadelphia ordinance violated his federally-protected right of interstate travel. Citing a similar decision by the Michigan Supreme Court on a similar requirement by the city of Detroit, the United States Supreme Court held the Philadelphia ordinance "to be constitutional as a bona fide continuing residence requirement and not to violate the right of interstate travel of appellant . . ." (McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645, 1976).

Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482 (1976). Prolonged negotiations for renewal of a collective-bargaining contract between teachers and a Wisconsin school board failed to produce a contract. Under Wisconsin law, the board has the power to negotiate terms of employment and is the only body empowered to employ and dismiss teachers. There is no statute providing for review of board decisions on such matters. After repeated unsuccessful efforts at negotiating a new contract, the teachers went on strike in direct violation of Wisconsin law. The board subsequently terminated the striking teachers' employment, whereupon the teachers brought suit contending that they had been denied due process of law required by the

Fourteenth Amendment because they had been discharged by the school board, a decision-making body that they claimed was not impartial.

The Court concluded that the "Due Process Clause of the Fourteenth Amendment did not guarantee respondent teachers that the decision to terminate their employment would be made or reviewed by a body other than the School Board" (Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 1976).

Mr. Chief Justice Burger delivered the opinion of the Court:

> Our assessment of the interests of the parties in this case leads to the conclusion that . . . the Board's prior role as negotiator does not disqualify it to decide that the public interest in maintaining uninterrupted classroom work required that teachers striking in violation of state law be discharged. (Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 494, 1976).

In his concluding remarks, Mr. Chief Justice Burger stated:

> Respondents have failed to demonstrate that the decision to terminate their employment was infected by the sort of bias that we have held to disqualify other decisionmakers as a matter of federal due process. A showing that the Board was "involved" in the events preceding this decision, in light of the important interest in leaving with the Board the power given by the state legislature, is not enough to overcome the presumption of honesty and integrity in policymakers and decisionmaking power . . . . Accordingly, we hold that the Due Process Clause of the Fourteenth Amendment did not guarantee respondents that the decision to terminate their employment would be

made or reviewed by a body other than the School Board. (Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 496-497, 1976)

National League of Cities v. Usery, Secretary of Labor, 426 U.S. 833 (1976). The original Fair Labor Standards Act of 1938 required every employer "engaged in commerce or in the production of goods for commerce" to pay each employee certain minimum wages and overtime pay for work performed in excess of a specified number of hours. The original Act specifically excluded states as employers. In 1961, the Act's coverage was extended beyond employees directly connected with interstate commerce to include all employees of enterprises engaged in commerce or in production for commerce. In 1966, the definition of "employer" was extended to include the state governments with respect to employees of state hospitals, institutions, and schools. In Maryland v. Wirtz (1968), the United States declared the 1961 and 1966 amendments to the Fair Labor Standards Act constitutional. In 1974, the Act was again amended so as to extend the Act's minimum wage and maximum hour provisions to all employees of the states and their political subdivisions. In National League of Cities v. Usery, Secretary of Labor (1976), a number of cities and states challenged the validity of the 1974 amendments.

The Court held that the 1974 amendments were not within the authority granted to Congress by the Commerce Clause.

In attempting to exercise its Commerce Clause power to prescribe minimum wages and maximum hours to be paid by the States in their sovereign capacities, Congress has sought to wield its power in a

> fashion that would impair the States' "ability to function effectively in a federal system," . . . and this exercise of congressional authority does not comport with the federal system of government embodied in the Constitution. (National League of Cities v. Usery, Secretary of Labor, 426 U.S. 833, 1976)

The Court ruled that not only were the 1974 amendments unconstitutional, but it also determined that the 1966 amendments were unconstitutional, thus overruling their 1968 decision in Maryland v. Wirtz (1968).

The Tenth Amendment forbids Congress to exercise power in a fashion that would impair the integrity of the states as governmental units or their ability to function in a federal system. In Mr. Justice Rehnquist's opinion he claimed,

> One undoubted attribute of state sovereignty is the State's power to determine the wages which shall be paid to those whom they employ in order to carry out their governmental functions, what hours those persons will work, and what compensation will be provided where these employees may be called upon to work overtime. (National League of Cities v. Usery, Secretary of Labor, 426 U.S. 845, 1976)

He concluded: "We hold that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress . . ." (National League of Cities v. Usery, Secretary of Labor, 426 U.S. 852, 1976).

Abood v. Detroit Board of Education, 431 U.S. 209 (1976). A Michigan statute authorizing union representation of local governmental

employees permitted an "agency shop" arrangement, whereby every employee represented by the union must pay union dues even though not a union member. Any employee who failed to comply faced discharge from employment. In 1969, the Detroit Federation of Teachers entered into an "agency shop" agreement with the Detroit Board of Education. Teachers opposed to collective bargaining in the public sector challenged the constitutionality of an agreement which forced them to contribute financially to support the union's collective bargaining activities. They also challenged the allocation of part of their "service charge" to the support of a variety of union activities they alleged were economic, political, professional, or religious in nature and not related to the union's collective-bargaining function.

The Court ruled in favor of the union on the collective-bargaining complaint and in favor of the non-union teachers on the activities not related to collective-bargaining activities. The Court held that "service charges" to non-members are valid when those charges are used for collective-bargaining, contract-administration, and grievance-adjustment purposes. "However, the Constitution requires that funds paid by employees as a condition of continued government employment not be used by the union for ideological, political purposes which are not directly related to its collective-bargaining function" (Zirkel, 1978b, p. 72).

Mr. Justice Stewart addressed this point as follows:

> Our decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments . . . . Equally clear is the proposition that a government may not require

> an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment . . . . The appellants argue that they fall within the protection of these cases because they have been prohibited, not from actively associating, but rather from refusing to associate. They specifically argue that they may constitutionally prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative. We have concluded that this argument is a meritorious one. (Abood v. Detroit Board of Education, 431 U.S. 233-234, 1976)

Harrah Independent School District v. Martin, 440 U.S. 194 (1979). The respondent, a tenured teacher in Oklahoma, was denied salary increases during the 1972-74 school years because of her refusal to comply with her school board's continuing-education requirement which was one of the terms of her employment contract. When the Oklahoma legislature enacted a statute mandating salary increases for teachers regardless of their compliance with the continuing-education requirement, the school board notified the respondent that her contract for 1974-75 school year would not be renewed unless she satisfied the continuing-education requirement. When she refused to comply, the school board determined that her persistent noncompliance constituted "willful neglect of duty" and refused to renew her contract for the ensuing year. Martin brought action against the school district, claiming that she had been denied "liberty" and "property"

without due process of law and equal protection of the laws, as guaranteed by the Fourteenth Amendment.

The Court decreed that the school board's actions did not violate respondent's due process rights.

> The School District has conceded at all times that respondent was a "tenured" teacher . . . and therefore could be dismissed only for specified reasons. She was accorded the usual elements of procedural due process. Shortly after the Board's April 1974 meeting, she was advised of the decision not to renew her contract and of her right to a hearing before the Board. At respondent's request, a hearing was held at which both she and her attorney appeared and unsuccessfully contested the Board's determination that her refusal to enroll in the continuing-education courses constituted "wilful neglect of duty." Thus, . . . respondent has no colorable claim of a denial of procedural due process. (Harrah Independent School District v. Martin, 440 U.S. 197-198, 1979)

Nor did the Court find that the respondent had been denied substantive due process.

> Respondent's claim that the Board acted arbitrarily in imposing a new penalty for noncompliance with the continuing-education requirement simply does not square with the facts. By making pay raises mandatory, the state legislature deprived the Board of the sanction that it had earlier used to enforce its teachers' contractual obligation to earn continuing-education credits. The Board thus turned to contract nonrenewal, but applied this sanction purely prospectively so that those who might have relied on its

> past practice would nonetheless have an opportunity to bring themselves into compliance with the terms of their contracts . . . . Such a course of conduct on the part of a school board responsible for the public education of students within its jurisdiction, and employing teachers to perform the principal portion of that task, can scarcely be described as arbitrary. Respondent's claim of denial of substantive due process under these circumstances is wholly untenable. (Harrah Independent School District v. Martin, 440 U.S. 198-199, 1979)

Likewise, so held the Court, the respondent was not denied equal protection of the laws. The Court ruled that the school board's concern with the educational qualifications of its teacher could not be considered impermissible. The school board's continuing-education requirement was viewed as a legitimate governmental concern. "The sanction of contract nonrenewal is quite rationally related to the Board's objective of enforcing the continuing-education obligation of its teachers. Respondent was not, therefore, deprived of equal protection of the laws" (Harrah Independent School District v. Martin, 440 U.S. 201, 1979).

Church and State Relationships

Most cases involving church-state relationships have required the courts to make an interpretation of the First Amendment to the United States Constitution which provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (United States Constitution, Amendment One). The prohibitions against Congressional action described in the First

Amendment are likewise applied to the states by the Fourteenth Amendment.

> 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. (United States Constitution, Amendment Fourteen)

The first phrase of the First Amendment is known as the Establishment Clause. Two classes of cases have been decided within the interpretation of the Establishment Clause: cases involving the activity of states in promoting religion by mandating or permitting prayer or Bible reading, and cases involving the use of tax revenue to aid church-related institutions.

In most instances, when the states have mandated or permitted Bible reading, prayer, or religious instruction, the Supreme Court has held the legislation in question to be unconstitutional. In those cases where states have allocated tax revenues to church-related institutions, the Court has allowed such aid when it benefits the child and has disallowed it when the sectarian institution is the recipient of the aid.

The courts have applied the following three-part test in recent Establishment Clause cases: First, does the statute in question have a "secular legislative purpose"? Second, does its "primary effect" neither advance nor inhibit religion? Third, does the statute and its administration avoid excessive government entanglement with religion? If the Court concludes that the statute before them requires a negative answer to any one of these three questions, it is likely that the statute will be declared unconstitutional.

The second phrase of the First Amendment is known as the Free Exercise Clause. There have been relatively few decisions by the Supreme Court involving this clause, but two significant issues have been determined by the Court on the basis of the Free Exercise Clause: the flag salute and the applicability of compulsory school attendance laws for certain religious sects.

Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930). A Louisiana law provided that tax revenue be spent to supply textbooks to all school children at no charge. Students of both public and private schools were the recipients of these books. Some of the private schools included were admittedly sectarian. A group of taxpayers sought to prevent the Louisiana state board of education from expending funds to purchase school books and supply them free of charge to the school children of the state, contending that such expenditures were in violation of both the state and federal Constitutions and the Fourteenth Amendment to the federal Constitution.

The Court held that the Louisiana law providing textbooks to children attending private sectarian schools as well as those attending public schools was constitutional. The Fourteenth Amendment's prohibition against the deprivation of life, liberty, and property without due process of law is not applicable in this case because the provision of books to all school children served a public interest and did not benefit the interest of the private schools or of parents of students attending those private schools.

In affirming the decision of the Louisiana Supreme Court, Mr. Chief Justice Hughes quoted from that court's holding:

> The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made . . . . The schools, however, are not the beneficiaries of these appropriations. . . . The school children and the state alone are the beneficiaries. (Cochran v. Louisiana State Board of Education, 281 U.S. 374-375, 1930)

Board of Education of Central School District No. 1 v. Allen, Commissioner of Education of New York, 392 U.S. 236 (1968). In another case involving the free use of textbooks for private schools, the Court upheld the constitutionality of a New York statute. The New York law required local public school authorities to loan textbooks free of charge to all students, of both public and private schools, in grades seven through twelve. A local school board sought a declaration that the statute was unconstitutional as violative of both clauses of the First Amendment.

As in the Cochran decision, the Court ruled that such a law is permissible. In the opinion of the Supreme Court the statute in question did not violate the First Amendment's prohibition of a state-established religion or prevent the free exercise of religion. Since the law was to benefit all school children, whether enrolled in public or private schools, and since only textbooks approved by school authorities could be loaned, the Court concluded that the statute was completely neutral with respect to religion.

> The express purpose of the statute was the furtherance of educational opportunities for the young, and the law merely makes available to all children the benefits of a general program to lend school books free of charge, and the financial benefit is to parents and children, not to schools. (Board of Education of Central School District No. 1 v. Allen, Commissioner of Education of New York, 392 U.S. 236, 1968)

Meek v. Pittenger, Secretary of Education, 421 U.S. 349 (1975). In 1972 the General Assembly of Pennsylvania passed two acts which provided "auxiliary services" (Act 194) and "instructional materials and equipment" and loans of textbooks (Act 195) free of charge to nonpublic elementary and secondary schools. The "auxiliary services" of Act 194 included counseling, testing, psychological services, speech and hearing therapy, and related services for exceptional, remedial, or educationally disadvantaged students. The "instructional materials" of Act 195 made periodicals, textbooks, photographs, maps, charts, recordings, and films available to nonpublic schools; the "instructional equipment" included projectors, recorders, and laboratory equipment. The validity of the two acts was challenged.

The Supreme Court declared Act 194 and all but the textbook loan provision of Act 195 unconstitutional, violating the Establishment Clause of the First Amendment as made applicable to the states by the Fourteenth Amendment.

Citing its decision in Board of Education v. Allen (1968), the Court upheld the constitutionality of the textbook loan provisions.

> Act 195's textbooks loan provisions, which are limited to textbooks acceptable for use in the public schools, are constitutional since they "merely make available to all children the benefits of a general program to lend school books free of charge," and the "financial benefit is to parents and children, not to schools." (Meek v. Pittenger, Secretary of Education, 421 U.S. 350, 1975)

While the Court allowed the state loan of secular textbooks to nonpublic schools, it found that the provision of "auxiliary services" and "instructional materials and equipment" was in violation of the Establishment Clause because it provided too direct and substantial an aid to private sectarian schools.

> The direct loan of instructional materials and equipment to nonpublic schools authorized by Act 195 has the unconstitutional primary effect of establishing religion because of the predominantly religious character of the schools benefiting from the Act since 75% of Pennsylvania's nonpublic schools that comply with the compulsory-attendance law and thus qualify for aid under Act 195 are church related or religiously affiliated. The massive aid that nonpublic schools receive is neither indirect nor incidental, and even though such aid is ostensibly limited to secular instructional material and equipment the inescapable result is the direct and substantial advancement of religious activity . . . . Act 194 also violates the Establishment Clause because the auxiliary services are provided at predominantly church-related schools. (Meek v. Pittenger, Secretary of Education, 421 U.S. 349-350, 1975)

Wolman v. Walter, 433 U.S. 229 (1977). An Ohio law authorized various forms of aid to nonpublic schools, most of which were sectarian. The Ohio Statute authorized funding for the following purposes: (1) purchasing secular textbooks; (2) supplying standardized testing and scoring services; (3) providing speech and hearing diagnostic services and diagnostic psychological services; (4) supplying to students needing specialized attention, therapeutic, guidance, and remedial services; (5) purchasing and loaning to pupils or their parents instructional materials and equipment; and (6) providing field trip transportation and services. A group of citizens and taxpayers challenged the statute.

In the opinion of the Court, as delivered by Mr. Justice Blackmun, those portions of the law authorizing the state to provide nonpublic school students with textbooks, standardized testing and scoring, diagnostic services, and therapeutic and remedial services are constitutional. Those portions authorizing the state to provide instructional materials and equipment and field trip services are unconstitutional, violating the Establishment Clause of the First Amendment.

The Court applied the three-part test to the Ohio statute:

> In order to pass constitutional muster under the Establishment Clause a statute (1) must have a secular legislative purpose; (2) must have a principal or primary effect that neither advances nor inhibits religion; and (3) must not foster an excessive government entanglement with religion. (Wolman v. Walter, 433 U.S. 231, 1977)

The Court had no difficulty with the first part of the test; the analytical difficulty has to do with the effect and entanglement criteria.

The textbook loan system was similar to those approved by the Court in Board of Education v. Allen (1968) and in Meek v. Pittenger (1975). Because the testing and scoring program was not controlled by the nonpublic school, and thus there was no need for direct financial aid (effect) or supervision (entanglement), that portion of the Ohio law was declared constitutional.

Providing speech and hearing diagnostic services and diagnostic psychological services on the nonpublic school premises

> will not create an impermissible risk of fostering ideological views; hence there is no need for excessive surveillance and there will not be impermissible church-state entanglement. The provision of health services to nonpublic as well as public school children does not have the primary effect of aiding religion. (Wolman v. Walter, 433 U.S. 230, 1977)

Therefore, that section of the Ohio law that provided for diagnostic services was found to be constitutional.

Similarly, the therapeutic, guidance, and remedial services, which were offered only on religiously neutral sites away from the nonpublic sectarian school, did not have the impermissible effect of advancing religion. And since those services would be administered only by public employees, no excessive entanglement would result. Thus, the provision of therapeutic, guidance, and remedial services was declared constitutional.

The Court concluded that the loan of instructional materials and equipment, even though limited to neutral and secular materials and equipment, had the primary effect of "providing a direct and substantial advancement of sectarian education . . . . It is impossible to separate

the secular education function from the sectarian, and hence the state aid in part inevitably supports the religious role of the schools" (Wolman v. Walter, 433 U.S. 230, 1977). Therefore, that paragraph of the Ohio law providing for the purchase and loan of instructional materials and equipment was declared unconstitutional.

The state support of nonpublic school field trips is a benefit to sectarian education rather than to individual students. Also, the state surveillance of nonpublic school field trips would result in excessive entanglement. Thus, that section of the Ohio law providing for state financing of nonpublic school field trip transportation and services failed to pass "constitutional muster" on two counts. Such a statute would serve to advance religion and would foster an excessive government entanglement with religion.

Everson v. Board of Education of the Township of Ewing, 330 U.S. 1 (1947). A New Jersey statute authorized local boards of education to make rules and contracts for the transportation of children to and from schools. Acting in accordance with the state statute, one school board authorized the reimbursement of parents for fares paid for the transportation of children attending public and Catholic schools. Although the state statute excluded such arrangements for students attending private schools operated for a profit, it allowed such arrangements for students enrolled in private, sectarian, not-for-profit schools. In this case, a district taxpayer challenged the validity of the state's statute and of the school board's resolution allowing reimbursement to parents for the transportation of children attending sectarian schools. The appellant argued that the

Due Process Clause of the Fourteenth Amendment was being violated because the statute and resolution authorized the state to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes. The appellant also claimed that the statute and resolution forced citizens to pay taxes which were used to help support and maintain sectarian schools, contrary to the prohibition of the First Amendment's Establishment Clause.

By a five-to-four majority, the Court held that a law authorizing reimbursement of the parents of school children for bus fares to and from private, sectarian schools, when included in a general program of reimbursement for the bus fares of public school children, is constitutional. In response to the appellant's allegation that the Fourteenth Amendment's Due Process Clause was being violated, the Court claimed that "the New Jersey legislature has decided that a public purpose will be served by using tax-raised funds to pay the bus fares of all school children, including those who attend parochial schools" (Everson v. Board of Education of the Township of Ewing, 330 U.S. 6, 1947). The state can legitimately decide that the safe transportation of all school children is in the public interest.

The Court also failed to allow the allegation that the reimbursement scheme violated the First Amendment, claiming instead that the statute and resolution were demonstrations of neutrality toward religion rather than support or establishment of it. The First Amendment "requires the state to be neutral in its relations with groups of religious believers and non-believers; it does not require the state to

be their adversary" (Everson v. Board of Education of the Township of Ewing, 330 U.S. 18, 1947).

Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, 333 U.S. 203 (1948). An Illinois board of education granted permission to representatives of the Catholic, Protestant, and Jewish faiths to teach religion classes once a week to students in grades four though nine. Pupils whose parents so requested were granted "released time" for religious instruction and were excused from their regular secular schedule for that period of time. Other students were required to remain in their regular classes. The religion teachers were employed by a private, interfaith association and were subject to the approval and supervision of the superintendent of schools. The religious instruction was held during school hours and inside school facilities. A resident and taxpayer of the school district challenged the constitutionality of the program.

Mr. Justice Black delivered the opinion of the Court: "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment . . . " (Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, 333 U.S. 210, 1948). The First Amendment prohibits the establishment of religion and requires, in the words of Jefferson, a "wall of separation between church and state." A program permitting religious instruction within public schools during school hours and excusing students

from their regular secular schedule is unconstitutional because it fails to maintain the required separation of church and state.

In his opinion, Mr. Justice Frankfurter concluded:

> We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion" (Everson v. Board of Education, 330 U.S. 59, 1947). If nowhere else, in the relation between Church and State, "good fences make good neighbors." (Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, 333 U.S. 232, 1948.

Zorach v. Clauson, 343 U.S. 306 (1952). Pursuant to a section of the New York Education Law, the New York City board of education permitted its public schools to release students during school hours, on written permission of their parents, so that they might leave the school building to go to religious centers for religious instruction or devotional exercises. Those students who are not released for religious purposes are required to remain in school. The participating religious centers provided weekly reports to the schools, sending the names of children released from the schools who failed to report for religious instruction.

All costs of this program were paid for by the religious organizations involved. The program involved neither religious instruction in the public school buildings nor expenditure of public funds. Taxpayers and residents of New York City challenged the law, contending that it was in essence not different from the one involved in the McCollum case.

The Court upheld the constitutionality of this section of the New York Education Law. The Court argued that in releasing children from school for religious instruction the state had not acted counter to the First Amendment. As long as the religious instruction takes place outside the schools' facilities and requires no state financial support there can be no claim of an establishment of religion. The opinion of the Court was delivered by Mr. Justice Douglas, who concluded by saying:

> In the McCollum case the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here . . . the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the McCollum case. But we cannot expand it to cover the present released time program unless separation of Church and State means that public instruction can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion. (Zorach v. Clauson, 343 U.S. 315, 1952)

Engel v. Vitale, 370 U.S. 421 (1962). The New York Board of Regents, overseers of that state's public school system, composed a twenty-two word nondenominational prayer as a part of their "Statement on Moral and Spiritual Training in the Schools" program. This prayer was published and distributed to the local boards of education throughout the state with the recommendation that it be recited at the beginning of each school day by the students in the public schools of New York. Shortly after one local

school district began the practice of reciting the prayer, the parents of ten students brought action in a New York State Court. These parents claimed that the actions of official governmental agencies in ordering the recitation of the prayer had violated the Establishment Clause of the First Amendment. The state courts of New York upheld the practice of reciting the Regents' prayer so long as the schools did not compel any student to join in the prayer. Students who were offended by the prayer were allowed to remain silent or to be excused from the room while the prayer was being recited.

The Court decided that the state's encouragement of the regular recitation of prayer in the public school system was in direct violation of the First Amendment's prohibition of a governmental establishment of religion.

> The fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. (Engel v. Vitale, 370 U.S. 430, 1962)

School District of Abington Township, Pennsylvania v. Schempp, Murray v. Curlett, 374 U.S. 203 (1963). A Pennsylvania law required that at least

ten verses from the Bible be read without comment at the opening of each school day. This Bible reading was followed by the recitation of the Lord's Prayer. Participation in these exercises was voluntary, and students and parents were advised that the student could absent himself from the classroom or, should he choose to remain in the room, not participate in the exercise. The city of Baltimore had a similar provision, consisting of the reading, without comment, of a chapter from the Bible and/or the recitation of the Lord's Prayer. The Schempp and Murray families challenged the constitutionality of the state statute and municipal regulations, respectively.

The Court struck down the Pennsylvania statute and the Baltimore regulations as unconstitutional, clearly contradictory of the Establishment Clause of the First Amendment.

> The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. (School District of Abington Township, Pennsylvania v. Schempp, 374 U.S. 224-225)

Chamberlin v. Dade County Board of Public Instruction, 377 U.S. 402 1964). A Florida statute required devotional Bible reading and the recitation of prayers in Florida public schools. The Florida Supreme Court declared the statute constitutional, but the United States Supreme

Court reversed the Florida Supreme Court's decision per curiam declaring the Florida statute unconstitutional. Following their decision in School District of Abington Township v. Schempp (1963), the Court held that the reading of Bible verses and the recitation of prayers on school property, during school hours, and under the supervision of school personnel was in violation of the Establishment Clause of the First Amendment (Chamberlin v. Dade County Board of Public Instruction, 377 U.S. 402, 1964).

Wisconsin v. Yoder, 406 U.S. 205 (1972). Members of the Old Order Amish religion and the Conservative Amish Mennonite Church were convicted of violating Wisconsin's compulsory school-attendance law. This Wisconsin law required a child's school attendance until age sixteen. The Amish respondents refused to send their children to any formal school, public or private, after they had graduated from the eighth grade because they believed that high school attendance was contrary to their religion and way of life and that they would endanger their own salvation and that of their children by complying with the law. The evidence showed that the Amish provide continuing informal vocation training for their children which is specifically designed to prepare them for adult life and religious practice within the Amish community. Testimony was also presented which showed that the Amish children would likely become self-sufficient citizens. Three Amish families challenged the constitutionality of the Wisconsin compulsory school-attendance law as it applied to them, claiming that it violated the Free Exercise Clause of the First Amendment.

The Court ruled in favor of the Amish, declaring the Wisconsin compulsory attendance law unconstitutional.

> Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children . . . . (Wisconsin v. Yoder, 406 U.S. 214, 1972)

The Court concluded that the Amish had adequately supported their claim that enforcement of the compulsory attendance law after the eighth grade would prevent the free exercise of their religious beliefs.

> In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs. (Wisconsin v. Yoder, 406 U.S. 219, 1972)

The Court also denied the state's argument that it was empowered as parens patriae to override the parents' interest for the benefit of the children. The Amish respondents presented convincing evidence that their way of life would not impair the physical or mental health of the children and would not create adults incapable of being self-supporting, responsible citizens.

Mr. Chief Justice Burger delivered the opinion of the Court and concluded:

> Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education. In light of this convincing showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. (Wisconsin v. Yoder, 406 U.S. 235-236, 1972)

Wheeler v. Barrera, 417 U.S. 402 (1974). Chapter I (formerly Title I) of the Elementary and Secondary Education Act of 1965 provides for federal funding of remedial programs for educationally deprived children

in both public and private schools. The primary responsibility for designing and implementing such a program rests with the local educational agency, which program must then be approved by the state educational agency and the U.S. Department of Education. Respondents, parents of children attending nonpublic schools in Kansas City, Missouri, brought class action against state school officials, alleging that the state school officials had "arbitrarily and illegally" approved a Title I plan (so called here because it was under this designation that the Supreme Court heard this case) that deprived private school children of services comparable to those offered to public school children. The defendants, state school officials, claimed that the aid sought by the respondents exceeded Title I's requirements and violated the State's Constitution, state law, and public policy.

The Title I Handbook stated only that the local educational agency's plan provide eligible private school students with services that were "comparable in quality, scope, and opportunity for participation to those provided for public school children with needs of equally high priority." The law does not require that identical services be provided. Although over sixty-five percent of Title I funds allocated to Missouri had been used to provide personnel for remedial instruction, state officials had refused to appropriate any money to provide similar remedial instruction at nonpublic schools.

The Supreme Court decided that the state school officials had failed to comply with the Elementary and Secondary Education Act's requirements. But the Court cautioned that their decision was not to be interpreted to mean that the state school officials were required to submit and approve

plans that employed the use of Title I teachers on private school premises during regular school hours. This on-the-premises private school instruction by public school Title I teachers was what the respondents claimed they were entitled to by virtue of the Title I provisions.

> In the opinion of the Court, as delivered by Mr. Justice Blackmun:
>
> The Court of Appeals properly recognized, as we have noted, that petitioners failed to meet their broad obligation and commitment under the Act to provide comparable programs. "Comparable," however, does not mean "identical," and, contrary to the assertions of both sides, we do not read the Court of Appeals' opinion or, for that matter, the Act itself, as ever requiring that identical services be provided in nonpublic schools. Congress recognized that the needs of educationally deprived children attending nonpublic schools might be different from those of similar children in public schools; it was also recognized that in some States certain programs for private and parochial schools would be legally impossible because of state constitutional restrictions, most notable in the church-state area . . . . Title I was not intended to override these individualized state restrictions. Rather, there was a clear intention that the assistance programs be designed on local levels so as to accommodate the restrictions. (Wheeler v. Barrera, 417 U.S. 420-421, 1974)

Although it may be difficult, the Court said, it is not impossible to design and implement a legal Title I program that would provide "comparable" services despite the prohibition of on-the-premises instruction in the private schools.

> Under the Act, respondents are entitled to comparable services . . . . As we have stated repeatedly herein, they are not entitled to any particular form of service, and it is the role of the state and local agencies, and not of the federal courts, at least at this stage, to formulate a suitable plan. (Wheeler v. Barrera, 417 U.S. 428, 1974)

Race, Language, and Sex Discrimination

One of the distinguishing characteristics of the American ideal has been the tradition of compulsory, universal education through a system of free, public schools. This tradition carries with it the notion that education is available to all, regardless of their cultural, racial, religious, or ethnic background. Because ours is a pluralistic society, the problems of universal education for all Americans have been considerable. As a result there have been a number of court cases involving alleged discriminatory practices in the fulfillment of this American dream of universal education.

Discrimination issues flow primarily from the Equal Protection Clause of the Fourteenth Amendment, the applicable section of which reads: " . . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws" (United States Constitution, Amendment Fourteen).

The bulk of the discrimination cases tried in the American judicial system have been racial discrimination issues. Perhaps the most well-known of all United States Supreme Court decisons impacting on education was the Brown v. Board of Education (1954) decision. Zirkel (1978b) pointed out that

> in retrospect one sees that when the Supreme Court ruled that segregation of school children on the basis of race was unconstitutional, the Constitution changed much more significantly than the schools. In practice, the decision failed, as Brown II (1955) did, to inspire reform in the schools "with all deliberate speed." (p. 74)

Another aspect of discrimination emerged with the Lau v. Nichols (1974) decision. This decision and others like it mandated that the schools must adapt to meet the language needs of its non-English-speaking clientele. In recent years sex discrimination charges have been added to the dockets of many of our nation's courts, including the Supreme Court. Although there have been relatively few sex discrimination cases tried before the Supreme Court, it appears to be an area of increasing litigation.

Plessy v. Ferguson, 163 U.S. 537 (1896). An act of the legislature of Louisiana, passed in 1890, required all railway companies to provide "equal but separate" accomodations for whites and blacks. A second section of the act provided criminal penalties for passengers who insisted on being seated in a car not reserved for their own race. Plessy, a citizen of the United States and a resident of Louisiana, challenged the constitutionality of the Louisiana act, claiming that it violated the Thirteenth Amendment, which abolished slavery, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The Court upheld the constitutionality of the law requiring segregation of the races in railway cars and providing for separate but equal facilities. In response to the Thirteenth Amendment argument, the

Court said:

> A statute which implies merely a legal distinction between the white and colored races--a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color--has no tendency to destroy the legal equality of the two races, or re-establish a state of involuntary servitude. (Plessy v. Ferguson, 163 U.S. 543, 1896)

The Court also concluded that the Louisiana act did not violate the Fourteenth Amendment by abridging the privileges or immunities of United States citizens, or depriving persons of liberty or property without due process of law, or by denying them the equal protection of the laws. The Court determined that although the Fourteenth Amendment required political equality between whites and blacks it did not require social commingling.

> The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. (Plessy v. Ferguson, 163 U.S. 544, 1896)

Gong Lum v. Rice, 275 U.S. 78 (1927). Thirty years after the Plessy decision, the State Superintendent of Education of Mississippi excluded Gong Lum's daughter from attending a white school because she was of Chinese descent and not a member of the white race. The superintendent was acting in accordance with a section of the state's constitution which

provided that "separate schools shall be maintained for children of the white and colored races." Gong Lum contended that the provisions denied him and his daughter equal protection of the laws.

The Court ruled that the Mississippi Constitution did not violate the Fourteenth Amendment's Equal Protection Clause. The state's decision to place Chinese students in the black schools and not in schools for whites was found to be within the state's authority. The Court held that although most cases involving racial discrimination involved separate schools for whites and blacks,

> . . . we can not think that the question is any different or that any different result can be reached . . . where the issue is as between white pupils and pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment. (Gong Lum v. Rice, 275 U.S. 87, 1927)

Brown v. Board of Education of Topeka ("Brown I"), 347 U.S. 483 (1954). In what has been proclaimed by many as the most significant Supreme Court decision affecting education, the Supreme Court reversed the Plessy decision and decreed that the doctrine of "separate but equal" had no place in the field of public education. Four separate cases from Kansas, South Carolina, Virginia, and Delaware were consolidated and decided in this landmark case. In each case, black children sought admission to the public schools of their community on a non-segregated basis. In each case, admission had been denied. Kansas, by state law, permitted but did not require separate schools for blacks and whites; South Carolina,

Virginia, and Delaware had state constitutional and statutory provisions which required the segregation of blacks and whites in the public schools.

Residents and taxpayers who challenged these laws were denied relief by the lower courts, except in the Delaware case. The courts in Kansas, South Carolina, and Virginia based their decisions on the "separate but equal" doctrine permitted under Plessy v. Ferguson (1896). The Delaware court granted relief because the schools which black children attended were found to be inferior; thus, the "separate but equal" doctrine could not validate the Delaware system. The plaintiffs appealed to the highest court in the land, contending that "segregated public schools are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws" (Brown v. Board of Education of Topeka, 347 U.S. 488, 1954).

Mr. Chief Justice Warren presented the question, and the Court's answer:

> Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. (Brown v. Board of Education of Topeka, 347 U.S. 493, 1954)
>
> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold, that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal

protection of the laws guaranteed by the Fourteenth Amendment. (Brown v. Board of Education of Topeka, 347 U.S. 495, 1954)

Brown v. Board of Education of Topeka ("Brown II"), 349 U.S. 294 (1955). The Brown I decision declared the fundamental principle that racial discrimination in public education is unconstitutional and that all provisions of federal, state, and local law which required or permitted such discrimination must yield to this principle.

Recognizing the complexities involved in moving from a dual, segregated system to a unitary system of public education, the Court provided the following guidelines:

> Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. (Brown v. Board of Education of Topeka, 349 U.S. 299, 1955)

However, the Court pointed out, equal educational opportunity cannot be delayed while the public school authorities debate all the particulars of compliance. A "prompt and reasonable start" toward full compliance was required. Public schools which admitted students on a racially nondiscriminatory basis were to become a reality "with all deliberate speed."

Goss v. Board of Education of Knoxville, Tennessee, 373 U.S. 683 (1963). Nine years after the first Brown decision the Court heard, in Goss v. Board of Education (1963), of one of a number of ill-designed plans for desegregation. The Court had realized that there would be a variety of obstacles that would arise in the transition from dual to unitary school systems; but the Court had also mandated "good faith compliance at the earliest practicable date." Two Tennessee school boards had proposed desegregation plans which provided for the rezoning of school districts without reference to race. Each plan also contained a transfer provision which would allow any student to request a transfer from the school to which he was assigned to a school where he would be in the racial majority.

Black students and their parents challenged the desegregation plans of these two school boards. Mr. Justice Clark observed:

> The question centers around substantially similar transfer provisions incorporated in formal desegregation plans adopted by the respective local school boards pursuant to court orders. The claim is that the transfer programs are invalid because they are based solely on race and tend to perpetuate the pre-existing racially segregated school system. Under the over-all desegregation plans presented to the trial courts, school districts would be rezoned without reference to race. However, by the terms of the transfer provisions, a student, upon request, would be permitted, solely on the basis of his own race and the racial composition of the school to which he had been assigned by virtue of rezoning, to transfer from such school, where he would be

> in the racial minority, back to his former segregated school where his race would be in the majority. (Goss v. Board of Education of Knoxville, Tennessee, 373 U.S. 684, 1963)

The Court reasoned that because the transfer plans were based solely on racial factors that they would ultimately lead back to segregation of the races and thus served to perpetuate racial segregation. This, the Court concluded, ran counter to the mandate of the two Brown decisions, and could not be permitted. For this reason the Supreme Court held that the transfer plans were in violation of the Fourteenth Amendment's Equal Protection Clause. Mr. Justice Clark concluded:

> Not only is race the factor upon which the transfer plans operate, but also the plan lacks a provision whereby a student might with equal facility transfer from a segregated to a desegregated school. The obvious one-way operation of these two factors in combination underscores the purely racial character of and purpose of the transfer provisions. We hold that the transfer plans promote discrimination and are therefore invalid. (Goss v. Board of Education of Knoxville, Tennessee, 373 U.S. 688, 1963)

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964). This litigation began in 1951 and was included among the four separate cases of Brown I (1954) in which the Supreme Court held that Virginia's school segregation laws were unconstitutional. The Court ordered in Brown II (1955), that black students of Prince Edward County be admitted to the public schools on a racially nondiscriminatory basis "with all deliberate speed."

Efforts to desegregate Prince Edward County public schools met with considerable resistance. After an unsuccessful attempt to close any public schools where whites and blacks were enrolled together and to cut off state funds to nonsegregated schools, the General Assembly of Virginia, in 1959, repealed the compulsory attendance law and made school attendance a local option. The Prince Edward County school board refused to appropriate funds for the operation of public schools. Meanwhile, a private foundation operated schools for white children only and in 1960 became eligible for county and state tuition grants.

The Court ruled that " . . . closing the Prince Edward County schools while public schools in all the other counties were being maintained denied the petitioners and the class of Negro students they represent the equal protection of the laws guaranteed by the Fourteenth Amendment" (Griffin v. County School Board of Prince Edward County, 377 U.S. 225, 1964).

Recognizing the deliberate efforts of Prince Edward County officials to circumvent the holdings of the two Brown decisions, the Court said that

> the time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia. (Griffin v. County School Board of Prince Edward County, 377 U.S. 234, 1964)

Green v. County School Board of New Kent County, 391 U.S. 430 (1968). The New Kent County school system operated two schools, one on the east side and one on the west side of New Kent County, Virginia. Approximately

one-half of the county's population was black, but there was no residential segregation, members of both races residing throughout the county. In spite of the decisions of Brown I and Brown II in 1954 and 1955, the New Kent County school board continued to racially segregate students. Each school served the whole county, and twenty-one buses traveled overlapping routes to transport students to their designated school. In 1965, the board, in order to remain eligible for federal financial aid, adopted a "freedom-of-choice" plan for desegregating the schools. The plan permitted students, except those entering the first and eighth grades, to choose annually between schools. Those not stating their choice were assigned to the school they had previously attended. First and eighth graders were required to make a definite choice between the two schools. During the first three years of the "freedom-of-choice" plan no white student had chosen to attend the all-black school, and although 115 blacks had enrolled in the formerly all-white school, eighty-five percent of the black students in the district still attended the all-black school. The adequacy of the "freedom-of-choice" plan was challenged in this case.

The Court ruled that the New Kent "freedom-of-choice" was unacceptable because it had not resulted in the "racially nondiscriminatory school system" called for in Brown II. Although the Court did not go so far in this case as to declare "freedom-of-choice" plans unconstitutional, it did express that experience had indicated that it was an ineffective tool for desegregation and suggested other alternatives for complying with the Brown decisions.

> The burden is on a school board to provide a plan that promises realistically to work now, and a plan that at this late date fails to

> provide a meaningful assurance of prompt and effective disestablishment of a dual system is intolerable. (Green v. County School Board of New Kent County, 391 U.S. 430, 1968)

In the opinion of the Court, a "freedom-of-choice" plan offered little promise that the required unitary, nonsegregated school system would be established. New, effective desegregation plans needed to be established without further delay so that the Fourteenth Amendment's requirement of equal protection of the laws for the black students could be met.

Zirkel (1978b) claimed that the Green case set the stage for a new era in school desegregation.

> It was in Green that the Court first adopted the percentage of black-white students attending a given school as the primary measurement of whether a desegregation plan had been effective in achieving a unitary, nonracial school system. But instead of reducing the number of desegregation cases, the Green decision actually increased the litigation as school systems began to avail themselves of the apparent loopholes left by that decision. These loopholes included the failure of the Court to define what a working desegregation plan would entail and the failure to specify what a unitary school system was. The ambiguity surrounding these two points generated confusion and further litigation. (p. 75)

Beginning with the Green decision the Supreme Court became more actively involved in the desegregation process.

United States v. Montgomery County Board of Education, 395 U.S. 225 (1969). From 1964 to 1968, the local District Court judge had worked to push the Montgomery County, Alabama Board of Education to achieve racial desegregation of the county's schools. Since the Montgomery County Board of Education had taken no steps to integrate the public schools in the ten years after the Brown I decision, the courts intervened.

> Obviously voluntary integration by the local school officials in Montgomery had not proved to be even partially successful. Consequently, if Negro children of school age were to receive their constitutional rights as we had declared them to exist, the coercive assistance of courts was imperatively called for. (United States v. Montgomery County Board of Education, 395 U.S. 228, 1969)

In 1964 the District Court judge began to offer this "coercive assistance." In his initial order the judge required integration of certain grades and followed this with annual proceedings, including reports by the school board and hearings, opinions, and court orders. One of the provisions of the District Court judge's 1968 order dealt with faculty and staff desegregation. The judge ordered the nonracial allocation of faculty and staff with fixed mathematical ratios throughout the system. It was this reliance on mathematical ratios which the school board challenged.

Citing the Montgomery County school board's history of noncompliance and delay in creating a "system of public education freed of racial discrimination" as required in Brown II, the Court upheld the order of the District Court judge requiring fixed mathematical ratios. Praising the patience and wisdom of the judge, the Court concluded:

"Judge Johnson's order now before us was adopted in the spirit of this Court's opinion in Green v. County School Board, . . . in that his plan 'promises realistically to work, and promises realistically to work now'" (United States v. Montgomery County Board of Education, 395 U.S. 235, 1969). The Brown decision required the establishment of unitary school systems. The Court held that the nonracial assignment of faculty and staff is an acceptable method of satisfying that requirement.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). In the 1968-69 school year the Charlotte-Mecklenburg school system had more than 84,000 students. Approximately twenty-nine percent of these students were black. Despite a desegregation plan, adopted by the school board and approved by the District Court and which was based on geographic zoning of attendance zones with a free-transfer provision, the schools remained largely segregated. In 1968 petitioner Swann moved for further relief based on the Green requirement that school boards "come forward with a plan that promises realistically to work, and promises realistically to work now."

When the school board failed to produce a satisfactory plan, one was imposed by the District Court. This plan relied upon zoning, pairing, and grouping techniques whereby several outlying elementary schools were grouped with each black inner city school in order to achieve a more acceptable racial balance. For the high schools and junior high schools, simple restructuring of school attendance zones achieved the racial balance sought. The implementation of the plan required extensive busing. The plan also required that as far as practicable, the schools ought to

reflect the seventy-one to twenty-nine white-to-black student ratio of the district. In this case the school board challenged the District Court's plan, contending that it was unreasonable and too burdensome.

Reiterating its holding of Brown I, the Supreme Court declared that segregation of public schools on the basis of race constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court declared in their holding in this case that when school authorities default in their obligation to provide acceptable remedies, the district courts have broad powers to fashion remedies that will assure unitary school systems. That power includes: (1) the prerogative to order that teachers be assigned in such a fashion that a certain degree of faculty desegregation is achieved; (2) the right to forbid patterns of school construction and abandonment which serve to perpetuate or re-establish a dual system; (3) the right to impose mathematical ratios and racial quotas as a starting point in shaping a desegregation plan; (4) the right to alter school attendance zones, including the grouping and pairing of noncontiguous zones, to achieve desegregation; and (5) the right to require busing of students to a school not closest to the students' homes in order to achieve desegregation.

Mr. Chief Justice Burger delivered the opinion of the Court:

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by Brown I as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of Brown II. That was the basis for the

holding in Green that school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies. (Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 15, 1971)

Norwood v. Harrison, 413 U.S. 455 (1973). A Mississippi statutory program, begun in 1940, had provided textbooks to students in both public and private schools without reference to whether any participating private school had racially discriminatory policies. Under the Mississippi program, the state purchased the textbooks then loaned them to the schools in the state. Between 1963 and 1970, the number of private, nonsectarian schools in Mississippi increased from seventeen to 155 and enrollment in such schools increased from 2362 to approximately 42,000. It was apparent that the creation and growth of these private schools was a direct response to the mandate to desegregate the public school systems of Mississippi.

While reaffirming their opinion that private schools have the right to exist and operate, the Supreme Court in this case denied that the Equal Protection Clause requires the state to provide assistance to private schools.

> A State's special interest in elevating the quality of education in both public and private schools does not mean that the State must grant aid to private schools without regard to constitutionally mandated standards forbidding state-supported discrimination. That the Constitution may compel toleration of private discrimination in some circumstances does not mean that it requires state support for such discrimination. (Norwood v. Harrison, 413 U.S. 462-463, 1973)

The Court also decreed that free textbooks, like tuition grants to students in private schools, were a form of financial assistance which benefited the schools themselves. By providing tangible aid in the form of free textbooks to schools which engage in racially discriminatory practices, the state gives support to discrimination. "Racial discrimination in state-operated schools is barred by the Constitution" . . . (Norwood v. Harrison, 413 U.S. 465, 1973). The Equal Protection Clause of the Fourteenth Amendment prohibits the state from granting tangible, specific financial aid to private, segregated schools.

Runyon v. McCrary, 427 U.S. 160 (1976). Two black children applied for admission to private, nonsectarian schools and were subsequently denied admission solely on the basis of race. In this case, the children challenged the private schools' practice of racial discrimination as being counter to Title 42 U.S.C. section 1981. Title 42 U.S.C. section 1981, as part of the Civil Rights Act of 1866, provides that "all persons within the jurisdiction of the United States shall have the same right in every state . . . to make and enforce contracts . . . as is enjoyed by white citizens . . . ."

The principal issue in this case was whether section 1981 prohibits private schools from refusing admission to otherwise qualified children solely because they are black, and if so, whether that federal law is constitutional as so applied. The Court answered in the affirmative to both parts of the question. According to the interpretation of the Supreme Court, section 1981 "prohibits private, commercially operated, nonsectarian schools from denying admission to prospective students because they are Negroes" (Runyon v. McCrary, 427 U.S. 161, 1976). The federal law expressly prohibits racial discrimination in the making and enforcing of private contracts, and the racial discrimination practiced by the two schools amounted to a "classic violation" of section 1981. The parents of the two black children sought to enter into contractual arrangements with the schools, but "neither school offered services on an equal basis to white and nonwhite students" (Runyon v. McCrary, 427 U.S. 172-173, 1976).

The Court also concluded that section 1981, as applied in this case, does not violate the constitutionally protected rights of free association and privacy, or a parent's right to direct the education of his children.

> It may be assumed that parents have a right to send their children to schools that promote the belief that racial segregation is desirable, and that the children have a right to attend such schools, [but] it does not follow that the practice of excluding racial minorities from such schools is also protected by the same principle. (Runyon v. McCrary, 427 U.S. 161, 1976)

Lau v. Nichols, 414 U.S. 563 (1974). This class action was brought by non-English-speaking Chinese students against officials responsible for the operation of the San Francisco school system. The California Education Code calls for mastery of the English language by students in California schools, but about 1800 Chinese-speaking students were receiving no remedial English language instruction nor any other compensatory program. This class of students claimed that the San Francisco school board denied them opportunity to participate in the public educational program. The Chinese-speaking students alleged that the school board's failure to provide them with an equal educational opportunity violated the Equal Protection Clause of the Fourteenth Amendment and section 601 of the Civil Rights Act of 1964. Section 601 prohibits recipients of federal financial assistance from discriminating against students on the basis of race, color, or national origin. The Department of Health, Education, and Welfare had authority to promulgate regulations to safeguard the provisions of section 601. In 1968 the Department of Health, Education, and Welfare issued a guideline which stated that "[s]chool systems are responsible for assuring that students of a particular race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system" (33 Federal Register 4956). A 1970 HEW guideline was more to the point:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in

order to open its instructional program to these students. (35 Federal Register 11595)

The Court determined that the failure to provide non-English-speaking students with special instruction denied them a meaningful opportunity to participate in the public education program and thus violated section 601 of the Civil Rights Act of 1964 and the HEW regulations and guidelines. The Court did not decide whether the school system's failure to provide such a program violated the Equal Protection Clause of the Fourteenth Amendment. "A school district receiving federal aid must provide special instruction for non-English-speaking students whose education is severely hampered by the language barrier, at least when there are substantial numbers of such students within the district" (Zirkel, 1978b, p. 98).

Cleveland Board of Education v. LaFleur, Cohen v. Chesterfield County School Board, 414 U.S. 632 (1974). Pregnant public school teachers brought action in these companion cases challenging the mandatory maternity leave rules of the Cleveland, Ohio, and Chesterfield County, Virginia, school boards. The Cleveland rule required a pregnant teacher to take unpaid maternity leave five months before the expected birth, with application for leave to be made at least two weeks prior to her departure. A teacher on maternity leave was not eligible to return to work until the beginning of the next regular semester after her child was three months old. A physician's certificate of physical fitness was also required prior to her return to work.

The Chesterfield County rule required pregnant teachers to leave work at least four months prior to the expected birth, with notice to be given

at least six months before the anticipated birth. Return to work was guaranteed no later than the first day of the school year after the date she presented a physician's certificate of fitness.

The Court held that the mandatory termination provisions of both school systems violated the Due Process Clause of the Fourteenth Amendment. The school boards argued that their rules were necessary for two reasons: to maintain continuity of instruction and to assure that students have a physically capable instructor in the classroom.

> Thus, while the advance-notice provisions in the Cleveland and Chesterfield County rules are wholly rational and may well be necessary to serve the objective of continuity of instruction, the absolute requirements of termination at the end of the fourth or fifth month of pregnancy are not. (Cleveland Board of Education v. LaFleur, 414 U.S. 642, 1974)

Recognizing that the mandatory termination provisions of the two school systems' rules were designed to protect students from potentially incapacitated pregnant teachers, the Court felt that the rules swept too broadly,

> for the provisions amount to a conclusive presumption that every pregnant teacher who reaches the fifth or sixth month of pregnancy is physically incapable of continuing . . . . The rules contain an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary. (Cleveland Board of Education v. LaFleur, 414 U.S. 644, 1974)

The Court also concluded that Cleveland's provisions that the teacher was not eligible to return to work until her child reached an age of three months violated the Due Process Clause of the Fourteenth Amendment. Such a rule, the Court said, is arbitrary and irrational. The Chesterfield County return rule was found to be permissible.

Vorcheimer v. School District of Philadelphia, 532 2d 880 (3d Circuit 1976). A female high school student who had been denied admission to an all-male academic high school because of her gender challenged the constitutionality of her rejection. The Philadelphia school district offers two types of college preparatory programs: comprehensive and academic. The comprehensive high schools provide a wide range of courses, including those required for college admission. The only criterion for enrollment in the comprehensive schools is residence within a designated zone. All but three of Philadelphia's comprehensive schools are coeducational. There are only two academic high schools in the city of Philadelphia. These have high admission standards (only seven percent of the students in the city qualify) and serve the whole city. One of the two academic schools enrolls only male students, the other only female students. Enrollment at these schools is strictly voluntary. The two academic schools are comparable in quality and offer essentially equal educational opportunities.

The plaintiff argued that the school district's refusal to admit her to the all-male academic high school was in violation of the Equal Education Opportunities Act of 1974 and of the Equal Protection Clause of the Fourteenth Amendment. The decision rendered by the Court of Appeals,

which decision the United States Supreme Court affirmed, stated:

> Where record disclosed no inequality in opportunity for education between two public high schools, one of which had exclusively male students and the other of which had exclusively female students, policy declaration of Equal Education Opportunities Act that children are entitled to "equal educational opportunity" without regard to race, color, or sex was inapplicable and did not require finding that maintenance of two sex-segregated public high schools was contrary to public policy. (Vorcheimer v. School District of Philadelphia, 532, 2d 880, 3d Circuit 1976)

In response to the claim that the plaintiff had been denied equal protection of the laws, the Court of Appeals answered:

> Where attendance at either of two sex-segregated public high schools was voluntary and educational opportunities offered at the two schools were essentially equal and where the school system was otherwise coeducational, public school system's regulations which established admission requirements to the two high schools based on gender classification did not offend the equal protection clause of the United States Constitution. (Vorcheimer v. School District of Philadelphia, 532, 2d 880, 3d Circuit 1976)

School District Finance and Organization

The Tenth Amendment to the United States Constitution provides that powers not delegated to the federal government by the Constitution are reserved to the states. Because education is not mentioned in the Constitution, it is generally assumed, then, to be a state power. State

legislatures have exercised this power by organizing and financing a system of free public schools. With few exceptions the United States Supreme Court has extended broad powers to the states in matters of school district finance and organization. The Supreme Court has concluded that it is indeed within a state's power to establish and operate a system of free public education. In those few instances where the Court has struck down a state's educational policy, the issue has centered on the Constitutional question of equal protection of the laws. In these cases, the Court has held that the rights of a class of individuals to equal protection of the laws, as guaranteed by the Fourteenth Amendment, supersede the states' right to organize and finance the public school systems.

Attorney General of the State of Michigan ex rel. Kies v. Lowrey, 199 U.S. 233 (1905). The constitution of the state of Michigan requires the legislature to establish and provide a system of public education. In accordance with this requirement the legislature passed laws establishing school districts. In this case, a law enacted in 1881 established four school districts in Somerset and Moscow townships of Hillsdale County. In 1901, new legislation incorporated portions of the four original districts to create a new district. The defendants challenged the validity of the act creating the new district. The question to be resolved by the Court was: Does the legislature have the authority to alter school district boundaries? The defendants argued that the Constitutional guarantees of republican government (Article IV, section 4),

of the unimpaired right of contracts (Article I, section 10), and of the due process of the laws in protecting property rights (Amendment Fourteen) had been violated.

The Court ruled that "the legislature of the state has absolute power to make and change subordinate municipalities," (Attorney General of the State of Michigan ex rel. Kies v. Lowrey, 26 S.Ct. 29, 1905), including school districts. In answering the arguments of the defendants, the Court stated:

> If the legislature of the state has the power to create and alter school districts, and divide and apportion the property of such district, no contract can arise, no property of a district can be said to be taken, and the action of the legislature is compatable with a republican form of government . . . ." (Attorney General of the State of Michigan ex rel. Kies v. Lowrey, 26 S.Ct. 29, 1905)

State of Montana ex rel. Haire v. Rice, 204 U.S. 291 (1907). An act approved by the United States Congress in 1889 admitted Montana and several other states into the Union. Among the provisions of this enabling act was the granting of public lands to the state of Montana solely for the purpose of public education. The people of the territory about to become a state were required to select delegates to a convention charged with the responsibility of creating a state constitution and government.

The state constitution approved at this constitutional convention "in substance provided that all funds of the state institutions of learning should be invested and only the interest upon them used for the support of

those institutions . . ." (State of Montana ex rel. Haire v. Rice, 27 S.Ct. 284, 1907). In 1905 the state legislature authorized a bond issue to subsidize an addition to the state's normal school building. These bonds were to be secured by proceeds from the sale, lease, or exploitation of the lands that had been granted to Montana by the federal government for the support of the schools.

When the architect of the building addition sought to be paid for his services from the proceeds of the bond issue, the State Treasurer refused to pay him claiming that the bond issue secured by proceeds from the sale or lease of school lands was in violation of the state's constitutional requirement that only earned interest be used to support the schools of the state. Litigation followed the State Treasurer's refusal.

Affirming the judgment of the Supreme Court of Montana, the United States Supreme Court declared the bond act invalid because it was in violation of the Montana State Constitution. The Tenth Amendment provides that powers not specified as federal powers are reserved to the states. One of the state's powers is its provision for public education. The Court determined that, in view of the Tenth Amendment, a state may properly limit the way in which federal grants of land to the state for the purpose of education may be used. The requirement of Montana's Constitution that only earned interest be expended in supporting the schools of the state is, therefore, permissible.

Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969). A section of the New York Education Law provided that in certain school

districts residents, otherwise eligible to vote, were prohibited from voting in school district elections if they did not own or lease taxable real property or have children attending the local public schools. A bachelor who neither owned or leased taxable property challenged the constitutionality of the section, arguing that it was counter to the Equal Protection Clause of the Fourteenth Amendment. The school district argued that the state had a legitimate compelling interest in limiting the franchise in school district elections to those members of the community "primarily interested" in or "primarily affected" by school affairs.

The Supreme Court found the New York section to be a violation of the Fourteenth Amendment. Citing Williams v. Rhodes (1968), the Court said:

> In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interest of those who are disadvantaged by the classification. (Kramer v. Union Free School District No. 15, 395 U.S. 626, 1969)

In the present case the Court decided that although the state of New York did have a legitimate interest and the authority to enact laws relative to the operation of public schools, those laws must not deny any citizen of his constitutionally guaranteed rights.

> Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies

> the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. (Kramer v. Union Free School District No. 15, 395 U.S. 627, 1969)

In this case the Court ruled that those exclusions were not "necessary to promote a compelling state interest."

The Court also stated that while New York legitimately might limit the franchise to those "primarily interested in school affairs," the classifications of the section of the New York Education in question here did not accomplish that purpose "with sufficient precision to justify denying appellant and members of his class, since the classifications include many persons at best only remotely interested in school affairs and exclude others directly interested" (Kramer v. Union Free School District No. 15, 395 U.S. 621, 1969).

Turner v. Fouche, 396 U.S. 346 (1970). Black residents of Taliaferro County, Georgia brought action to challenge the constitutionality of a statutory system used to select juries and school boards. The system in question provided for a county school board of five landowners, selected by a grand jury, which in turn was chosen from a jury list compiled by six county jury commissioners who were appointed by the state superior court judge of that district. Although the population of Taliaferro County was about sixty percent black and although all students attending the county's two schools were black (all white students having transferred elsewhere), all the school board members were white. The complaint attacked Georgia's constitutional and statutory provisions for school board selection as contrary to the Equal Protection Clause of the Fourteenth Amendment.

The Supreme Court decreed that the requirement that members of county school boards be landowners was unconstitutional because it denied equal protection of the laws. In the opinion of the Court,

> the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidious discriminatory disqualifications. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees. (Turner v. Fouche, 396 U.S. 362-363, 1970)

Gordon v. Lance, 403 U.S. 1 (1971). The Constitution of West Virginia and certain West Virginia statutes require sixty percent voter approval of measures which incur bonded indebtedness or increase tax rates beyond those established by the Constitution. The school board of Roane County, West Virginia, submitted to the voters of that county a proposal calling for the issuance of general obligation bonds for the purpose of constructing new school buildings and improving existing facilities. By separate ballot, the voters were also asked to authorize the Board of Education to levy additional taxes to support current expenditures and capital improvements. Both proposals were defeated because they failed to obtain the required sixty percent approval. Respondents sought to have the sixty percent requirement declared unconstitutional as violative of the Fourteenth Amendment.

Even though West Virginia has made it more difficult for some kinds of governmental actions to be taken, " . . . there is nothing in the language of the Constitution, our history, or our cases that requires that

majority always prevail on every issue" (Gordon v. Lance, 403 U.S. 6, 1971). The Court concluded that "so long as such provisions do not discriminate against or authorize discrimination against any identifiable class they do not violate the Equal Protection Clause" (Gordon v. Lance, 403 U.S. 7, 1971).

McInnis v. Shapiro, 293 F. Supp. 327 (1968). In McInnis v. Ogilvie, a precursor to the widely publicized Rodriquez case, the Court affirmed the decision of the District Court upholding the constitutionality of a state system of funding public schools that relies heavily on the local property tax. In the McInnis case, heard on the District Court level as McInnis v. Shapiro (1968), a number of students from four school districts of Cook County, Illinois, alleged that the Illinois system of financing public education violated their Fourteenth Amendment rights of due process and equal protection of the laws. The students claimed that the Illinois system permitted wide variations in the expenditures per student from district to district, thereby providing some students with a better education than others.

The Illinois legislature had delegated authority to local school districts to raise funds to operate their schools by levying a tax on property and by issuing bonds for construction and improvement of buildings. (Legislation also limits both the maximum indebtedness and the maximum tax rates that school boards may impose.) Because the financial ability of individual districts varied substantially there was a wide variation in district per-pupil expenditures. However, a state

common school fund guaranteed each district a foundation level of 400 dollars per pupil and thus provided a minimum level of education funding.

While admitting that there were, indeed, inequalities in per-pupil expenditures from district to district, the District Court failed to find the Illinois statutory system unconstitutional. Failing to find the wide variations in per-pupil expenditures to be irrational and arbitrary, the District Court ruled that the system did not violate due process; and failing to find that the system constituted an invidious discrimination, the District Court held that the system did not deny the equal protection of the laws to any class of students.

The District Court thus ruled that a state system for funding public schools that relies largely on local property taxation is constitutional. The Supreme Court summarily affirmed the lower court's decision by an eight-to-one vote. In ruling that the Illinois system did not violate Fourteenth Amendment rights the District Court concluded its opinion as follows:

> The present Illinois scheme for financing public education reflects a rational policy consistent with the mandate of the Illinois Constitution. Unequal educational expenditures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination. Moreover, the statutes which permit these unequal expenditures on a district to district basis are neither arbitrary nor unreasonable.
>
> There is no Constitutional requirement that public school expenditures be made only on the basis of pupils' educational needs without regard to the financial strength of local school districts. Nor does the

> Constitution establish the rigid guideline of equal dollar expenditures for each student. (McInnis v. Shapiro, 293 F. Supp. 336, 1968)

San Antonio Independent School District v. Rodriquez, 411 U.S. 1 (1973). The financing of public elementary and secondary schools in Texas is based on mutual participation by state and local agencies. Nearly half of the revenues expended for education are derived from the state's Minimum Foundation Program which is designed to provide a basic minimum education for all children in the state. As a unit the school districts in the state contribute twenty percent of the revenues for this program which is then returned to the school districts under a formula designed to have an equalizing influence on expenditure levels between school districts. Every school district in Texas supplements its state aid through an ad valorem tax on property in its district. This revenue source varies with the value of taxable property in the district and results in wide variations in per-pupil expenditures among school districts.

> Appellees brought this class action on behalf of school children said to be members of poor families who reside in school districts having a low property tax base, making the claim that the Texas system's reliance on local property taxation favors the more affluent and violates equal protection requirements because of substantial interdistrict disparities in per-pupil expenditures resulting primarily from differences in the value of assessable

property among the districts. (San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 1973)

The United States Supreme Court has consistently maintained that the Equal Protection Clause requires "strict judicial scrutiny" of any statute which operates to the disadvantage of any suspect class of persons or interferes with the exercise of rights and liberties protected by the Constitution. The District Court found wealth to be a suspect classification and education to be a fundamental right. That court concluded that the Texas system of funding education could be sustained only if the state could show that its program was based on a "compelling state interest." When the state failed to demonstrate a compelling interest in its system of funding public education, the District Court declared the Texas school finance system unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. The state appealed to the United States Supreme Court.

By a five-to-four margin, the United States Supreme Court reversed the opinion of the District Court. Finding neither the suspect-classification nor the fundamental-interest arguments convincing, the Supreme Court declared the Texas funding system permissible. In the opinion of the Court: "The Texas system does not disadvantage any suspect class. It has not been shown to discriminate against any definable class of 'poor' people or to occasion discriminations depending on the relative wealth of the families in any district" (San Antonio Independent School District v. Rodriguez, 411 U.S. 2, 1973).

Likewise, there was no loss of a fundamental right, as the appellees claimed, because education is not constitutionally protected and since

at least a minimum education is provided to each student in the state. The question which the Supreme Court asked in evaluating the contention that the Texas funding system denied a fundamental right was, Does the Constitution, either explicitly or implicitly, guarantee a right to education? The Court answered their question in this manner: "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected" (San Antonio Independent School District v. Rodriguez, 411 U.S. 35, 1973). In its concluding remarks, the Court stated that the Texas funding system was rationally related to a "legitimate state purpose or interest" and therefore satisfied the standards of the Equal Protection Clause.

Summary

To the extent that the number and the scope of cases involving educational issues decided by the United States Supreme Court has increased in the past thirty years, so has educators' need to know. Various authorities in the field of school law have expressed the opinion that educators have failed to prepare themselves for the legal realities of their profession. McCarthy, Leipold and Rousch, Nolte, Hazard, Gatti and Gatti, Van Geel, Simpson, and Campbell have all stated that ignorance of the law is inexcusable and that measures need to be taken to rectify the existing situation.

Five areas of Supreme Court decisions affecting education were identified in this study: student rights and responsibilities; employee rights and responsibilities; church and state relationships; race,

language, and sex discrimination; and school district finance and organization. In each of these five areas, a number of United States Supreme Court decisions were discussed. Although the decisions discussed in this review of literature are by no means exhaustive, it is presumed that those presented do constitute a reasonable sampling of the decisions about which those involved in education ought to be knowledgeable.

CHAPTER 3

Research Design and Procedures

Introduction

This chapter contains a description of the research design, the selection of the sample, the instrument, and the procedures followed in data collection and statistical analysis.

Research Design

The techniques of descriptive research, sometimes known as survey research, were used in this study. Descriptive research attempts to systematically describe the facts and characteristics of a given population (Isaac and Michael, 1980). Descriptive research is concerned with describing the prevailing conditions of relationships that exist. It is mainly concerned with the present circumstances and not with past or future conditions (Best, 1977). In the present study the prevailing condition under examination was the amount of knowledge of Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members in Tennessee.

The specific type of descriptive research used in the present study was survey testing. Survey testing is defined as "simply the testing of a group of children (or adults) to ascertain the prevailing condition with respect to the traits measured by the test" (Good, Barr, and Scates, 1941, p. 297). Such testing is not concerned with the characteristics of respondents individually but with the generalized

statistics which result from study of the entire group (Good et al., 1941 and Best, 1977).

Selection of the Sample

The purpose of this study was to determine the amount of knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members in Tennessee; to determine if significant differences existed among these groups in terms of their knowledge of Supreme Court decisions affecting education; to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group depending on their years of experience in education; and to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group, depending on their level of education. In order to accomplish this purpose the four subgroups in the sample were public school teachers, principals, superintendents, and board members in Tennessee. The technique of random sampling was used to assure adequate representation of the population. The population consisted of the public school teachers, principals, superintendents, and board members of public school districts in Tennessee.

Tennessee State Department of Education officials provided assistance in selecting the sample of public school teachers, principals, and superintendents. Tennessee School Boards Association officials provided assistance in selecting the sample of school board members surveyed in the study. One hundred principals, one hundred superintendents, one hundred

board members, and two hundred teachers were randomly selected for participation in the study.

Instrumentation

Development of the Instrument

The instrument, Supreme Court Decisions Impacting on Education (Appendix C), was developed for the purpose of determining the amount of knowledge of Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members. The instrument was designed to elicit information concerning their knowledge of the holdings of the United States Supreme Court. The Supreme Court Decisions Impacting on Education instrument consisted of thirty-five items. Each of these items was identified as belonging to one of five separate categories of Supreme Court decisions affecting education. These categories were as follows: (1) student rights and responsibilities; (2) employee rights and responsibilities; (3) church and state relationships; (4) race, language, and sex discrimination; and (5) school district finance and organization.

The Supreme Court Decisions Impacting on Education instrument asked respondents to indicate whether the United States Supreme Court had mandated ("must"), permitted ("may"), or prohibited ("must not") a particular educational practice or procedure. A fourth alternative was provided ("don't know") for respondents who were unfamiliar with the decision of the Court on a particular item. These multiple-choice statements were formulated on the basis of a review and analysis of the literature. Basic statements of decisions rendered by the Supreme Court

were compiled into the survey instrument. The format of the Supreme Court Decisions Impacting on Education instrument was suggested by Perry A. Zirkel (Zirkel, 1978a and 1978c). Permission to use Zirkel's format was sought and received (see Appendix A).

Validation of the Instrument

The survey instrument was pilot tested by two groups of graduate students at East Tennessee State University majoring in educational administration and supervision during the summer of 1983. Recommendations concerning superfluous, inconsistent, or ambiguous statements were solicited. Recommendations and suggestions for improvement were incorporated into the survey instrument. By means of this pilot test, the Supreme Court Decisions Impacting on Education instrument was accepted as valid for the purposes of this study. A copy of the survey instrument is included in Appendix B.

Procedures

Data Collection

Once approval was granted by the advanced graduate committee to pursue the study, the Supreme Court Decisions Impacting on Education instrument was mailed to the randomly selected sample of public school teachers, principals, superintendents, and board members. Along with the instrument each participant received a cover letter explaining the procedures for completing the instrument (see Appendix C). Individual confidentiality was assured. A stamped, self-addressed envelope was provided for the participant to return the completed instrument. Four

weeks after the initial mailing a follow-up letter was sent to those subjects who had not responded (see Appendix D). Four weeks later data from the returned instruments were prepared for statistical analysis.

Statistical Analysis

For the purpose of statistical treatment the null form of each research hypothesis was tested. The null hypothesis postulates that there is no significant difference or relationship between the variables under analysis (Popham and Sirotnik, 1973). "The null hypothesis is a succinct way to express the testing of obtained data against chance expectations" (Kerlinger, 1973, p. 203).

One-way analysis of variance and the Newman-Keuls procedure were the statistical techniques utilized in testing the hypotheses in this study. Analysis of variance is an inferential technique used to determine if three or more means are significantly different. Because analysis of variance does not reveal where specific differences may lie among several means, special post hoc tests are required (Champion, 1976). In this study the Newman-Keuls post hoc procedure was used to determine where specific differences existed. The .05 level of significance was used in this study for determining statistical significance.

CHAPTER 4

An Analysis of the Findings of the Study

Introduction

The purpose of this study was to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members; to determine if significant differences existed among these groups in terms of their knowledge of Supreme Court decisions affecting education; to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group, depending on their years of experience in education; and to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group, depending on their level of education. Fourteen hypotheses were tested using the analysis of variance and Newman-Keuls procedures. The analysis of variance procedure indicated whether differences did, in fact, exist; the Newman-Keuls procedure indicated where the identified differences lay. The null form of each of the fourteen hypotheses was tested at the .05 level of significance. Details of the findings are presented in the following sections.

Analysis of the Findings

A total of 500 subjects was included in the sample which consisted of two hundred teachers, one hundred principals, one hundred superintendents, and one hundred school board members. All subjects were affiliated with a

public school system in the state of Tennessee. Eighty-five teachers, fifty-three principals, sixty-four superintendents, and thirty-nine board members returned usable instruments. A total of 241, or 48.2 percent, usable instruments were returned. Table 1 presents the preceding information in tabular form.

Table 1

Number and Percent of Returned Responses

Position	Number Sent	Number Returned	Percent
Teacher	200	85	42.5
Principal	100	53	53.0
Superintendent	100	64	64.0
Board Member	100	39	39.0
Total	500	241	48.2

There were seven questions on the survey instrument which were designed to measure respondents' knowledge about Supreme Court decisions affecting education in the area of student rights and responsibilities. Means and standard deviations for the four groups and for the entire sample in the area of student rights and responsibilities are presented in Table 2.

Table 2

Means and Standard Deviations for Respondents' Knowledge of Supreme Court Decisions in the Area of Student Rights and Responsibilities

Position	N	Mean	Standard Deviation
Teacher	85	3.3294	1.5227
Principal	53	3.8491	1.4464
Superintendent	64	4.1094	1.6438
Board Member	39	2.8462	1.3676
Entire Sample	241	3.5726	1.5719

Null Hypothesis 1

Null Hypothesis 1 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of student rights and responsibilities.

The results of the analysis of variance statistical procedure for Null Hypothesis 1 are presented in Table 3. The F ratio was 6.9737 with F probability being 0.0002 which was less than the .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 3

Analysis of Variance for Respondents' Knowledge of Supreme Court Decisions in the Area of Student Rights and Responsibilities

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	48.0990	16.0330	6.9737	.0002*
Within Groups	237	544.8802	2.2991		
Total	240	592.9793			

*P $\leq$ .05

Since the analysis of variance procedure revealed that there was a significant difference among the groups in the knowledge of Supreme Court decisions in the area of student rights and responsibilities, further analysis was conducted using the Newman-Keuls procedure. Superintendents scored significantly higher in the area of student rights and responsibilities than teachers and board members. Principals scored significantly higher than board members. No significant difference was found between superintendents and principals, between principals and teachers, or between teachers and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of student rights and responsibilities. Results of the Newman-Keuls procedure are presented in Table 4.

Table 4

Means and Mean Differences Between Groups in Their Knowledge of Supreme Court Decisions in the Area of Student Rights and Responsibilities

Group	Group Means	Group Mean Differences		
		Teacher	Principal	Superintendent
Board Members	2.8462	0.4832	1.0029**	1.2632**
Teachers	3.3294		.5197	.7800*
Principal	3.8491			.2603
Superintendent	4.1094			

*Significant at .05 level

** Significant at .01 level

There were eight questions on the survey instrument which were designed to measure respondents' knowledge about Supreme Court decisions affecting education in the area of employee rights and responsibilities. Means and standard deviations for the four groups and for the entire sample in the area of employee rights and responsibilities are presented in Table 5.

Table 5

Means and Standard Deviations for Respondents' Knowledge of Supreme Court Decisions in the Area of Employee Rights and Responsibilities

Position	N	Mean	Standard Deviation
Teacher	85	3.9882	1.7694
Principal	53	4.6981	1.4621
Superintendent	64	4.7500	1.6330
Board Member	39	4.5641	1.7441
Entire Sample	241	4.4398	1.6899

Null Hypothesis 2

Null Hypothesis 2 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of employee rights and responsibilities.

The results of the analysis of variance statistical procedure for Null Hypothesis 2 are presented in Table 6. The F ratio was 3.3185 with the F probability being 0.0206 which was less than the .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 6

Analysis of Variance for Respondents' Knowledge of Supreme Court Decisions in the Area of Employee Rights and Responsibilities

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Square	F Ratio	F Probability
Between Groups	3	27.6298	9.2099	3.3185	.0206*
Within Groups	237	657.7478	2.7753		
Total	240	685.3776			

* $P \leq .05$

Since the analysis of variance procedure revealed that there was a significant difference among the groups in the knowledge of Supreme Court decisions in the area of employee rights and responsibilities, further analysis was conducted using the Newman-Keuls procedure. Superintendents and principals scored significantly higher in the area of employee rights and responsiblilities than teachers. No significant difference was found between superintendents and principals, between superintendents and board members, between principals and board members, or between board members and teachers in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of employee rights and responsibilities. Results of the Newman-Keuls procedure are presented in Table 7.

Table 7

Means and Mean Differences Between Groups in Their Knowledge of Supreme Court Decisions in the Area of Employee Rights and Responsibilities

Group	Group Means	Group Mean Differences		
		Board Member	Principal	Superintendent
Teacher	3.9882	0.5759	0.7099*	0.7618*
Board Member	4.5641		0.1340	0.1859
Principal	4.6981			0.0519
Superintendent	4.7500			

*Significant at .05 level

There were seven questions on the survey instrument which were designed to measure respondents' knowledge about Supreme Court decisions affecting education in the area of church and state relationships. Means and standard deviations for the four groups and for the entire sample in the area of church and state relationships are presented in Table 8.

Table 8

Means and Standard Deviations for Respondents' Knowledge of Supreme Court Decisions in the Area of Church and State Relationships

Position	N	Mean	Standard Deviation
Teacher	85	2.4588	1.2301
Principal	53	3.0189	1.3372
Superintendent	64	3.8906	1.5442
Board Member	39	2.1026	1.2311
Entire Sample	241	2.9046	1.4900

Null Hypothesis 3

Null Hypothesis 3 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of church and state relationships.

The results of the analysis of variance statistical procedure for Null Hypothesis 3 are presented in Table 9. The F ratio was 19.3653 with the F probability being 0.0000 which was less than the .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 9

Analysis of Variance for Respondents' Knowledge of Supreme Court Decisions in the Area of Church and State Relationships

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	104.8938	34.9646	19.3653	.0000*
Within Groups	237	427.9111	1.8055		
Total	240				

*P $\leq$ .05

Since the analysis of variance procedure revealed that there was a significant difference among the groups in the knowledge of Supreme Court decisions in the area of church and state relationships, further analysis was conducted using the Newman-Keuls procedure. Superintendents scored significantly higher than teachers, principals, and board members. Principals scored significantly higher than teachers and board members. No significant difference was found between teachers and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of church and state relationships. Results of the Newman-Keuls procedure are presented in Table 10.

Table 10

Means and Mean Differences Between Groups in Their Knowledge of Supreme Court Decisions in the Area of Church and State Relationships

Group	Group Means	Group Mean Differences		
		Teacher	Principal	Superintendent
Board Member	2.1026	0.3562	0.9163**	1.7880**
Teacher	2.4588		0.5601*	1.4318**
Principal	3.0189			0.8717**
Superintendent	3.8906			

*Significant at .05 level

**Significant at .01 level

There were eight questions on the survey instrument which were designed to measure respondents' knowledge about Supreme Court decisions affecting education in the area of race, language, and sex discrimination. Means and standard deviations for the four groups and for the entire sample in the area of race, language, and sex discrimination are presented in Table 11.

Table 11

Means and Standard Deviations for Respondents' Knowledge of Supreme Court Decisions in the Area of Race, Language, and Sex Discrimination

Position	N	Mean	Standard Deviation
Teacher	85	3.9412	1.7617
Principal	53	4.4906	1.5016
Superintendent	64	4.5469	1.6896
Board Member	39	3.8462	1.8287
Entire Sample	241	4.2075	1.7171

Null Hypothesis 4

Null Hypothesis 4 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of race, language, and sex discrimination.

The results of the analysis of variance statistical procedure for Null Hypothesis 4 are presented in Table 12. The F ratio was 2.6229 with the F probability being 0.0513 which was greater than the .05 level of significance. Therefore, a significant difference was not found. The null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 12

Analysis of Variance for Respondents' Knowledge of Supreme Court Decisions in the Area of Race, Language, and Sex Discrimination

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	22.7391	7.5797	2.6229	0.0513
Within Groups	237	684.8875	2.8898		
Total	240	707.6266			

$P > .05$

There were five questions on the survey instrument which were designed to measure respondents' knowledge about Supreme Court decisions affecting education in the area of school district finance and organization. Means and standard deviations for the four groups and for the entire sample in the area of school district finance and organization are presented in Table 13.

Table 13

Means and Standard Deviations for Respondents' Knowledge of Supreme Court Decisions in the Area of School District Finance and Organization

Position	N	Mean	Standard Deviation
Teacher	85	2.2941	1.3612
Principal	53	2.8491	1.1162
Superintendent	64	2.9531	1.4631
Board Member	39	2.7179	1.2763
Entire Sample	241	2.6598	1.3480

Null Hypothesis 5

Null Hypothesis 5 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of school district finance and organization.

The results of the analysis of variance statistical procedure for Null Hypothesis 5 are presented in Table 14. The F ratio was 3.5795 with the F probability being 0.0146 which was less than .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 14

Analysis of Variance for Respondents' Knowledge of Supreme Court Decisions in the Area of School District Finance and Organization

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	18.9033	6.3011	3.5795	0.0146*
Within Groups	237	417.1963	1.7603		
Total	240	436.0996			

*P $\leq$ .05

Since the analysis of variance procedure revealed that there was a significant difference among the groups in the knowledge of Supreme Court decisions in the area of school district finance and organization, further analysis was conducted using the Newman-Keuls procedure. Superintendents and principals scored significantly higher than teachers. No significant difference was found between superintendents and principals, between superintendents and board members, between principals and board members, or between board members and teachers in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of school district finance and organization. Results of the Newman-Keuls procedure are presented in Table 15.

Table 15

Means and Mean Differences Between Groups in Their Knowledge of Supreme Court Decisions in the Area of School District Finance and Organization

Group	Group Means	Group Mean Differences		
		Board Member	Principal	Superintendent
Teacher	2.2941	0.4238	0.5550*	0.6950*
Board Member	2.7179		0.1312	0.2352
Principal	2.8491			0.1040
Superintendent	2.9531			

*Significant at .05 level

There was a total of thirty-five questions on the Supreme Court Decisions Impacting on Education instrument. Means and standard deviations for the four groups and for the entire sample are presented in Table 16.

Table 16

Means and Standard Deviations for Respondents' Overall Knowledge of Supreme Court Decisions Affecting Education

Position	N	Mean	Standard Deviation
Teacher	85	16.0118	5.1858
Principal	53	18.9057	4.5373
Superintendent	64	20.2500	5.3601
Board Member	39	16.0769	5.5221
Entire Sample	241	17.7842	5.4524

Null Hypothesis 6

Null Hypothesis 6 states that there will be no significant difference among public school teachers, principals, superintendents, and board members in the overall knowledge demonstrated about United States Supreme Court decisions affecting education.

The results of the analysis of variance statistical procedure for Null Hypothesis 6 are presented in Table 17. The F ratio was 10.4922 with the F probability being 0.0000 which was less than the .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 17

Analysis of Variance for Respondents' Overall Knowledge of Supreme Court Decisions Affecting Education

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	836.4943	278.8413	10.4922	.0000*
Within Groups	237	6298.2858	26.5750		
Total	240	7134.7801			

*P $\leq$ .05

Since the analysis of variance procedure revealed that there was a signigicant difference among the groups in the overall knowledge of Supreme Court decisions affecting education, further analysis was conducted using the Newman-Keuls procedure. Superintendents scored significantly higher than teachers and board members; principals scored significantly higher than teachers and board members. No significant difference was found between superintendents and principals or between board members and teachers in the overall knowledge demonstrated about United States Supreme Court decisions affecting education. Results of the Newman-Keuls procedure are presented in Table 18.

Table 18

Means and Mean Differences Between Groups in Their Overall Knowledge of Supreme Court Decisions Affecting Education

Group	Group Means	Group Mean Differences		
		Board Member	Principal	Superintendent
Teacher	16.0118	0.0651	2.8939*	4.2383**
Board Member	16.0769		2.8288*	4.1731**
Principal	18.9057			1.3443
Superintendent	20.2500			

*Significant at .05 level

**Significant at .01 level

There was a total of eighty-five public school teachers who returned a survey instrument. Thirteen respondents indicated that they had from one to five years of experience in education, twenty-three had from six to ten years experience, twenty-four had from eleven to fifteen years experience, seven had from sixteen to twenty years experience, and eighteen had twenty-one or more years of experience in education. Table 19 presents the means and standard deviations for the five experience levels and for the entire teacher sample on the overall knowledge of Supreme Court decisions affecting education.

Table 19

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Teachers with Differing Levels of Experience in Education

Years of Experience	N	Mean	Standard Deviation
1-5	13	16.5385	3.9710
6-10	23	16.6087	5.1499
11-15	24	17.0000	5.4133
16-20	7	14.4286	2.3705
21 +	18	14.1667	6.2521
Entire Teacher Sample	85	16.0118	5.1858

Null Hypothesis 7

Null Hypothesis 7 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school teachers with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

The results of the analysis of variance statistical procedure for Null Hypothesis 7 are presented in Table 20. The F ratio was 1.0636 with the F probability being 0.3801 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 20

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Teachers with Differing Levels of Experience in Education

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	114.0649	28.5162	1.0636	.3801
Within Groups	80	2144.9233	26.8115		
Total	84	2258.9882			

$P > .05$

There was a total of fifty-three public school principals who returned a completed survey instrument. Two respondents indicated that they had from one to five years of experience in education, two had from six to ten years experience, seven had from eleven to fifteen years experience, twelve had from sixteen to twenty years experience, and thirty had twenty-one or more years experience in education. Table 21 presents the means and standard deviations for the five experience levels and for the entire principal sample on the overall knowledge of Supreme Court decisions affecting education.

Table 21

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Principals with Differing Levels of Experience in Education

Years of Experience	N	Mean	Standard Deviation
1-5	2	24.0000	5.6559
6-10	2	18.5000	2.1213
11-15	7	17.5714	2.9358
16-20	12	17.8333	3.5119
21 +	30	19.3333	5.1282
Entire Principal Sample	53	18.9057	4.5373

Null Hypothesis 8

Null Hypothesis 8 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school principals with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

The results of the analysis of variance statistical procedure for Null Hypothesis 8 are presented in Table 22. The F ratio was 1.0215 with the F probability being .4058 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 22

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Principals with Differing Levels of Experience in Education

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	83.9807	20.9952	1.0215	.4058
Within Groups	48	986.5476	20.5531		
Total	52	1070.5283			

$P > .05$

There was a total of sixty-four public school superintendents who returned a completed survey instrument. Twelve respondents indicated that they had from eleven to fifteen years of experience in education, seven had from sixteen to twenty years of experience, and forty-five had twenty-one or more years of experience in education. None of the respondents had ten years, or less, experience in education. Table 23 presents the means and standard deviations for the five experience levels and for the entire superintendent sample on the overall knowledge of Supreme Court decisions affecting education.

Table 23

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Superintendents with Differing Levels of Experience of Education

Years of Experience	N	Mean	Standard Deviation
1-5	0		
6-10	0		
11-15	12	21.5000	4.2319
16-20	7	20.2857	6.5756
21 +	45	19.9111	5.4972
Entire Superintendent Sample	64	20.2500	5.3601

Null Hypothesis 9

Null Hypothesis 9 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school superintendents with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

The results of the analysis of variance statistical procedure for Null Hypothesis 9 are presented in Table 24. The F ratio was 0.4086 with the F probability being .6664 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 24

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Superintendents with Differing Levels of Experience in Education

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	2	23.9270	11.9635	.4086	.6664
Within Groups	61	1786.0730	29.2799		
Total	63	1810.0000			

$P > .05$

There was a total of thirty-nine public school board members who returned a completed survey instrument. Twelve respondents indicated that they had from one to five years of experience in education, ten had from six to ten years of experience, seven had from eleven to fifteen years of experience, four had from sixteen to twenty years of experience, and six had twenty-one or more years of experience in education. Table 25 presents the means and standard deviations for the five experience levels and for the entire school board sample on the overall knowledge of Supreme Court decisions affecting education.

Table 25

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Board Members with Differing Levels of Experience in Education

Years of Experience	N	Mean	Standard Deviation
1-5	12	17.2500	6.1515
6-10	10	14.2000	6.1608
11-15	7	17.0000	4.3205
16-20	4	14.0000	5.3541
21 +	6	17.1667	4.9160
Entire Board Member Sample	39	16.0769	5.5221

Null Hypothesis 10

Null Hypothesis 10 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school board members with one to five, six to ten, eleven to fifteen, sixteen to twenty, and twenty-one or more years of experience in education.

The results of the analysis of variance statistical procedure for Null Hypothesis 10 are presented in Table 26. The F ratio was 0.6480 with the F probability being .6321 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 26

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Board Members with Differing Levels of Experience in Education

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	82.0859	20.5215	.6480	.6321
Within Groups	34	1076.6833	31.6672		
Total	38	1158.7692			

$P > .05$

There was a total of eighty-five public school teachers who returned a completed survey instrument. One respondent indicated that he was a high school graduate, forty-one had the baccalaureate degree, twenty-one had a master's degree, eighteen had a master's degree plus additional course work, and four had the education specialist degree. None had received the doctorate degree. Table 27 presents the means and standard deviations for the six education levels and for the entire teacher sample.

Table 27

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Teachers with Differing Levels of Educational Attainment

Highest Level of Education	N	Mean	Standard Deviation
High School Graduate	1	7.0000	0.0000
Baccalaureate Degree	41	14.9268	5.2839
Master's Degree	21	17.3810	4.8008
Master's Plus	18	16.8333	5.1933
Education Specialist Degree	4	18.5000	2.3805
Doctoral Degree	0		
Entire Teacher Sample	85	16.0118	5.1858

Null Hypothesis 11

Null Hypothesis 11 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school teachers with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

The results of the analysis of variance statistical procedure for Null Hypothesis 11 are presented in Table 28. The F ratio was 2.0042 with the F probability being .1018 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the

null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 28

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Teachers with Differing Levels of Educational Attainment

Source of Variance	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	205.7554	51.4388	2.0042	.1018
Within Groups	80	2053.2329	25.6654		
Total	84	2258.9882			

$P \geq .05$

There was a total of fifty-three public school principals who returned a completed survey instrument. One respondent indicated that he had received a baccalaureate degree, nine had a master's degree, thirty had a master's degree plus additional coursework, nine had the education specialist degree, and four had received the doctoral degree. Table 29 presents the means and standard deviations for the six education levels and for the entire principal sample.

Table 29

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Principals with Differing Levels of Educational Attainment

Highest Level of Education	N	Mean	Standard Deviation
High School Graduate	0		
Baccalaureate Degree	1	21.0000	0.0000
Master's Degree	9	20.7778	3.5277
Master's Plus	30	19.4333	3.9973
Education Specialist Degree	9	16.2222	6.4183
Doctoral Degree	4	16.2500	3.6856
Entire Principal Sample	53	18.9057	4.5373

Null Hypothesis 12

Null Hypothesis 12 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school principals with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

The results of the analysis of variance statistical procedure for Null Hypothesis 12 are presented in Table 30. The F ratio was 1.7655 with the F probability being .1513 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the

null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 30

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Principals with Differing Levels of Educational Attainment

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	137.3005	34.3251	1.7655	.1513
Within Groups	48	933.2278	19.4422		
Total	52	1070.5283			

$P \leq .05$

There was a total of sixty-four public school superintendents who returned a completed survey instrument. Thirteen respondents indicated that they had attained a master's degree, twenty-five had a master's degree plus additional coursework, twelve had the education specialist degree, and fourteen had received the doctoral degree. Table 31 presents the means and standard deviations for the six education levels and for the entire superintendent sample.

Table 31

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Superintendents with Differing Levels of Educational Attainment

Highest Level of Education	N	Mean	Standard Deviation
High School Graduate	0		
Baccalaureate Degree	0		
Master's Degree	13	16.4615	4.8065
Master's Plus	25	21.6400	3.1075
Education Specialist Degree	12	17.9167	7.0641
Doctoral Degree	14	23.2857	4.9835
Entire Superintendent Sample	64	20.2500	5.3601

Null Hypothesis 13

Null Hypothesis 13 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school superintendents with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Educational Specialist's degree, and a doctoral degree.

The results of the analysis of variance statistical procedure for Null Hypothesis 13 are presented in Table 32. The F ratio was 6.2174 with the F probability being .0010 which was less than the .05 level of significance. Therefore, a significant difference was found, and the null hypothesis was rejected.

Table 32

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Superintendents with Differing Levels of Educational Attainment

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	3	429.2354	143.0785	6.2174	.0010*
Within Groups	60	1380.7646	23.0127		
Total	63	1810.0000			

*$P \leq .05$

Since the analysis of variance procedure revealed that there was a significant difference among superintendents with differing levels of educational attainment in their knowledge of Supreme Court decisions affecting education, further analysis was conducted using the Newman-Keuls procedure. This analysis indicated that superintendents with a Master's degree plus additional course work and superintendents with a doctoral degree scored significantly higher than superintendents with a Master's degree and superintendents with an Education Specialist's degree. Results of the Newman-Keuls procedure are presented in Table 33.

Table 33

Means and Mean Differences Between Superintendents with Differing Levels of Educational Attainment in Their Knowledge of Supreme Court Decisions Affecting Education

Highest Level of Education	Group Means	Group Mean Differences		
		Education Specialist	Master's Plus	Doctorate
Master's Degree	16.4615	1.4552	5.1785*	6.8242**
Education Specialist	17.9167		3.7233*	5.3690**
Master's Plus	21.6400			1.6457
Doctoral Degree	23.2857			

*Significant at .05 level

**Significant at .01 level

There was a total of thirty-nine public school board members who returned a completed survey instrument. Sixteen respondents indicated that they were high school graduates, seventeen had received a baccalaureate degree, two had a master's degree, two had a master's degree plus additional course work, and two had received the doctoral degree. Table 34 presents the means and standard deviations for the six education levels and for the entire board member sample.

Table 34

Means and Standard Deviations for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Board Members with Differing Levels of Educational Attainment

Highest Level of Education	N	Mean	Standard Deviation
High School Graduate	16	15.6250	5.3650
Baccalaureate Degree	17	15.8235	6.1363
Master's Degree	2	18.0000	1.4142
Master's Plus	2	14.0000	5.6569
Education Specialist Degree	0		
Doctoral Degree	2	22.0000	0.0000
Entire Board Member Sample	39	16.0769	5.5221

Null Hypothesis 14

Null Hypothesis 14 states that there will be no significant difference in the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by public school board members with a high school diploma, a baccalaureate degree, a Master's degree, a Master's degree plus additional coursework, an Education Specialist's degree, and a doctoral degree.

The results of the analysis of variance statistical procedure for Null Hypothesis 14 are presented in Table 35. The F ratio was 0.7215 with the F probability being .5839 which was greater than the .05 level of significance. Therefore, a significant difference was not found, and the

null hypothesis was not rejected. No two groups were significantly different at the .05 level.

Table 35

Analysis of Variance for the Overall Knowledge of Supreme Court Decisions Affecting Education Demonstrated by Board Members with Differing Levels of Educational Attainment

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Squares	F Ratio	F Probability
Between Groups	4	90.5486	22.6372	.7205	.5839
Within Groups	34	1068.2206	31.4183		
Total	38	1158.7692			

$P > .05$

Summary

The purpose of this study was to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members. Fourteen null hypotheses were formulated and tested at the .05 level of statistical significance using the analysis of variance. The Newman-Keuls statistical procedure was conducted if significant differences were revealed. This latter procedure was performed to determine where significant differences lay. Data were analyzed for 241 respondents.

The first six hypotheses were formulated and tested to determine if significant differences existed among the four groups in terms of their knowledge of Supreme Court decisions affecting education. Five areas and

the total knowledge of Supreme Court decisions affecting education were identified and tested. Significant differences were found to exist among the four groups in all areas except in the area of race, language, and sex discrimination cases. Significant differences were found among the four groups in the overall knowledge of Supreme Court decisions affecting education. Therefore, null hypotheses 1, 2, 3, 5, and 6 were rejected; null hypothesis 4 was not rejected.

Hypotheses 7, 8, 9, and 10 were formulated and tested to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group depending on their years of experience in education. No significant differences were found among the members of any of the four groups. The null hypotheses were not rejected.

Hypotheses 11, 12, 13, and 14 were formulated and tested to determine if significant differences existed in the knowledge of Supreme Court decisions among members of each group depending on their level of education. No significant differences were found among the members of the teacher, principal, and board member samples. Therefore, the null hypotheses 11, 12, and 14 were not rejected. Significant differences were found among superintendents with differing levels of educational attainment; null hypothesis 13 was rejected.

CHAPTER 5

Summary and Recommendations

Summary

The primary purpose of this study was to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members. Survey instruments were mailed to two hundred teachers, one hundred principals, one hundred superintendents, and one hundred board members in the public school systems of Tennessee. A follow-up mailing was sent out four weeks after initial mailing. Eighty-five teachers, fifty-three principals, sixty-four superintendents, and thirty-nine board members returned usable instruments. This total of 241 responses represented 48.2 percent of the sample.

Specifically, this study compared knowledge of Supreme Court decisions affecting education in three ways. First, six hypotheses were formulated to determine if significant differences existed among public school teachers, principals, superintendents, and board members in their knowledge of Supreme Court decisions affecting education. Five of these hypotheses were concerned with specific areas of school governance. The sixth hypothesis was concerned with the overall knowledge of Supreme Court decisions affecting education.

Second, four hypotheses were formulated to determine if significant differences existed in the knowledge of Supreme Court decisions affecting

education among members of each group, depending on respondents' years of experience in education. Third, four hypotheses were formulated to determine if significant differences existed in the knowledge of Supreme Court decisions affecting education among members of each group, dependent on respondents' level of education.

The fourteen null hypotheses were formulated to be tested at the .05 level of significance. The analysis of variance statistical procedure was used as the first step in data analysis. This procedure yielded an F ratio and an F probability which indicated whether a significant difference existed. If a significant difference was revealed, the Newman-Keuls procedure was used to determine where specific differences occurred.

Significant differences were revealed in six of the fourteen hypotheses tested. Thus, the null hypothesis was rejected for hypotheses 1, 2, 3, 5, 6, and 13.

The mean score of 17.7842 for the entire sample on the thirty-five item instrument suggested a deficiency in the preservice and in-service training of individuals involved in education. Although significant differences were found among groups, mean scores for the four groups revealed a general lack of knowledge in the overall knowledge of Supreme Court decisions affecting education.

There was a significant difference among groups in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of student rights and responsibilities. Superintendents scored significantly higher than teachers and board members on this section of the survey instrument, and principals scored significantly higher than board members. No significant difference was

found between superintendents and principals, between principals and teachers, or between teachers and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of student rights and responsibilities.

There was a significant difference among groups in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of employee rights and responsibilities. Superintendents and principals scored significantly higher than teachers on this section of the survey instrument. No significant difference was found between superintendents and principals, between superintendents and board members, between principals and board members, or between board members and teachers in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of employee rights and responsibilities.

There was a significant difference among groups in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of church and state relationships. Superintendents scored significantly higher than teachers, principals, and board members on this section of the survey instrument. Principals scored significantly higher than teachers and board members. No significant difference was found between teachers and board members in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of church and state relationships.

There was no significant difference among groups in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of race, language, and sex discrimination.

There was a significant difference among groups in the knowledge demonstrated about United States Supreme Court decisions affecting education in the area of school district finance and organization. Superintendents and principals scored significantly higher than teachers on this section of the survey instrument. No significant difference was found between superintendents and principals, between superintendents and board members, between principals and board members, or between board members and teachers in the amount of knowledge demonstrated about United States Supreme Court decisions affecting education in the area of school district finance and organization.

There was a significant difference among groups in the overall knowledge demonstrated about United States Supreme Court decisions affecting education. Superintendents scored significantly higher than teachers and board members on the survey instrument. Principals scored significantly higher than teachers and board members. No significant difference was found between superintendents and principals or between board members and teachers in the overall knowledge demonstrated about United States Supreme Court decisions affecting education.

The number of years of experience in education did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by teachers.

The number of years of experience in education did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by principals.

The number of years of experience in education did not significantly affect the amount of knowledge about United States Supreme Court decisions

affecting education demonstrated by superintendents.

The number of years of experience in education did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by board members.

The level of education attained did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by teachers.

The level of education attained did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by principals.

The level of education attained significantly affected the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by superintendents. Superintendents with a Master's degree plus additional coursework and superintendents with a doctoral degree scored significantly higher than superintendents with a Master's degree and superintendents with an Education Specialist's degree.

The level of education attained did not significantly affect the amount of knowledge about United States Supreme Court decisions affecting education demonstrated by board members.

Recommendations

One may conclude from the results of this survey that the superintendents and principals surveyed possess more knowledge of United States Supreme Court decisions affecting education than do board members or teachers. Except in the area of race, language, and sex discrimination, superintendents scored significantly higher than teachers.

Except in the areas of race, language, and sex discrimination and student rights and responsibilities, principals scored significantly higher than teachers. Superintendents and principals scored significantly higher than board members in the areas of student rights and responsibilities, church and state relationships, and overall knowledge.

In four of the five sections of the survey, superintendents had the highest score, and principals had the second-highest score. The sole exception was the area of race, language, and sex discrimination, in which principals scored slightly higher than superintendents. For the entire survey, superintendents and principals scored significantly higher than teachers and board members. An analysis of the findings of this survey led to the conclusion that administrators are better equipped to make the decisions that comply with the laws affecting education. Thus, the responsibilities delegated to superintendents and principals seem to be rightly placed.

However, the low scores of all groups surveyed indicated a general lack of preparation in the area of school law. The fact that the mean score of the entire sample was 17.7842 on a thirty-five item test indicated a deficiency in this area.

As a result of the findings of this study, the following recommendations were proposed:

1. College and university teacher-education programs should be evaluated in terms of the preservice preparation of teachers in the area of school law, including Supreme Court decisions affecting education.

2. Graduate programs in educational administration should be evaluated in terms of their preparation of principals and superintendents

in the area of school law, including Supreme Court decisions affecting education.

3. State and national school board associations should evaluate their preparation of school board members in the area of school law, including Supreme Court decisions affecting education.

4. State and local school districts and school board associations should seek to provide appropriate in-service programs to keep their personnel informed of pertinent matters of school law, including Supreme Court decisions affecting education.

5. A study of this nature should be conducted in other states, in specific geographic regions, or in a nationwide study.

6. Because of the ever-changing nature of the law and of the Court's interpretation of the law, studies of this nature should be conducted periodically.

7. The present study examined education levels and levels of experience in education as factors in knowledge of Supreme Court decisions affecting education. Future studies of this type might consider other factors such as sex differences, regional differences, recency of course work in school law, or size of school district.

8. Future studies of this type might incorporate a different set of test items to measure knowledge of Supreme Court decisions affecting education. For example, other studies might include questions pertaining solely to higher education.

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APPENDICES

APPENDIX A

LETTER FROM PERRY A. ZIRKEL

LEHIGH UNIVERSITY

524 Brodhead Avenue, Bethlehem, Pennsylvania 18015 (215) 861-3221

SCHOOL OF EDUCATION
Office of the Dean

July 14, 1982

William P. Abegglen
2403 Huffine Circle
Johnson City, TN 37601

Dear Mr. Abegglen:

You hereby have my permission to use my COURTS-SCHOOLS instrument or an abbreviated version thereof for your dissertation study with the understanding that the source will be appropriately acknowledged and that you send me a courtesy copy of your abstract upon completing the study.

Citations of articles in which I used this instrument or a similar technique are:

Zirkel, P. "Test on Supreme Court decisions affecting education. Phi Delta Kappan, 1978, 59, 521-2.

Zirkel, P. A quiz on recent court decisions concerning student conduct. Phi Delta Kappan, 1980, 62, 206-208.

Zirkel, P. & Metzger, M. Special education: A quick quiz to keep up-to-date. School Administrator, 1981, 30 (9), 20-21.

Zirkel, P. Test your legal savvy. Instructor, 1982, 91 (7), 54-55, 129.

Zirkel, P. Outcomes analysis of court decisions concerning faculty employment. NOLPE School Law Journal, 10 (2), 171-183.

I do not have any printed copies of the instrument left, but it is largely contained in NOLPE School Law Journal, 1978, 7, 199-208. Also, the book summarizing the decisions is A Digest of Supreme Court Decisions Affecting Education. Bloomington, Indiana: Phi Delta Kappa, 1978 (and 1982 Supplement).

Sincerely,

Perry A. Zirkel
Dean and Professor

PAZ:ej

APPENDIX B

THE SURVEY INSTRUMENT

SUPREME COURT DECISIONS IMPACTING ON EDUCATION

INSTRUCTIONS: Please place an "X" on one of the first three lines below to indicate whether the United States Supreme Court has held the practice or procedure described to be mandatory ("MUST"), permissible ("MAY"), or prohibited ("MUST NOT"). Use the fourth line if you don't know what the Court has ruled.

STUDENT RIGHTS AND RESPONSIBILITIES

1. School officials _____ be granted immunity from liability for damages when they can show they have used nonmalicious and "good faith" actions to fulfill their official duties.
   Must_____ May_____ Must not_____ Don't know_____
2. School officials _____ grant the same due process procedure to juveniles as would be given to adults.
   Must_____ May_____ Must not_____ Don't know_____
3. School officials _____ require students to participate in daily flag salute exercises.
   Must_____ May_____ Must not_____ Don't know_____
4. School officials _____ allow pupils to wear armbands, picket peacefully, distribute publications, or otherwise express their beliefs when such means of expression do not disrupt or interfere with school activities.
   Must_____ May_____ Must not_____ Don't know_____
5. School officials _____ provide oral or written notice and an informal hearing prior to suspensions for periods of up to ten days for students whose presence does not pose an immediate threat to persons, property, or the academic process.
   Must_____ May_____ Must not_____ Don't know_____
6. School officials _____ use reasonable corporal punishment of students under the authorization of or in the absence of state law regarding the use of corporal punishment.
   Must_____ May_____ Must not_____ Don't know_____
7. A school district _____ require, under authorization of a state statute or under compulsion of local ordinance, vaccination as a condition of school attendance.
   Must_____ May_____ Must not_____ Don't know_____

EMPLOYEE RIGHTS AND RESPONSIBILITIES

8. A school district _____ require teachers or other school employees to take a broad loyalty oath as a requisite of employment.
   Must_____ May_____ Must not_____ Don't know_____
9. A school district _____ dismiss a teacher for refusing to answer questions which are unrelated to an inquiry into the teacher's fitness to teach.
   Must_____ May_____ Must not_____ Don't know_____
10. A school district _____ impose a rule establishing contract nonrenewal as the sanction for failure to comply with a continuing education requirement.
    Must_____ May_____ Must not_____ Don't know_____
11. A school district _____ dismiss a teacher for openly criticizing the school board's or administration's policies on issues of public importance when the board cannot prove knowing or reckless falsity of the teacher's statement.
    Must_____ May_____ Must not_____ Don't know_____
12. A school district _____ require its employees to reside in the school district as a condition of initial or continued employment.
    Must_____ May_____ Must not_____ Don't know_____
13. A state _____ allow its school districts to have contractual arrangements for nonprofessional staff members that are not in conformity with the minimum-salary, maximum-hour provisions of the Federal Fair Labor Standards Act.
    Must_____ May_____ Must not_____ Don't know_____
14. A school district _____ dismiss teachers who are engaged in an illegal strike when the teachers do not show that the board's decision was based on personal, pecuniary, or antiunion bias.
    Must_____ May_____ Must not_____ Don't know_____
15. A state _____ allow its school districts to enter into a collective bargaining agreement that has an "agency shop" provision (i.e., a requirement that nonunion employees pay a service fee for expenses relating to the union's collective bargaining function).
    Must_____ May_____ Must not_____ Don't know_____

CHURCH AND STATE RELATIONSHIPS

16. School officials _____ allow an exemption from compulsory high school attendance for students affiliated with religious sects that have a long history of informal vocational training during the adolescent years.
Must_____ May_____ Must not_____ Don't know_____

17. A school district _____ provide for comparable services to parochial school pupils in its plan for spending federal Chapter I (formerly "Title I") funds.
Must_____ May_____ Must not_____ Don't know_____

18. School officials _____ allow for "released time" for religious instruction of pupils during school hours outside the school building.
Must_____ May_____ Must not_____ Don't know_____

19. A state _____ provide for the lending of approved secular textbooks free-of-charge to nonpublic school children.
Must_____ May_____ Must not_____ Don't know_____

20. A state _____ provide for reimbursement of bus transportation costs to parents of children attending parochial schools.
Must_____ May_____ Must not_____ Don't know_____

21. A school district _____ have a program requiring the daily recitation of a nondenominational prayer in school under the supervision of school personnel.
Must_____ May_____ Must not_____ Don't know_____

22. A school district _____ require the regular reading of Biblical passages under the supervision of school personnel.
Must_____ May_____ Must not_____ Don't know_____

RACE, LANGUAGE, AND SEX DISCRIMINATION

23. A school district _____ operate single-sex schools when such a school is voluntary, when coeducational alternatives are available, and when educational opportunities offered at the schools for males and females are comparable.
Must_____ May_____ Must not_____ Don't know_____

24. Private, nonsectarian schools _____ offer admission to qualified applicants solely on the basis of race.
Must_____ May_____ Must not_____ Don't know_____

25. A school district _____ implement a plan for desegregation in which a student may voluntarily transfer from a school where he/she is in the racial minority to a school of his/her own racial composition.
Must_____ May_____ Must not_____ Don't know_____

26. A school district's desegregation proposal _____ include implementation of mathematical ratios for the desegregation of students and faculty.
Must_____ May_____ Must not_____ Don't know_____

27. A school district's desegregation proposal _____ include a provision for the busing of students to a school which is not the closest school to the students' homes.
Must_____ May_____ Must not_____ Don't know_____

28. A school district _____ grant tax credits or other state financial assistance (e.g., free textbooks, tuition grants) to students of racially segregated private schools.
Must_____ May_____ Must not_____ Don't know_____

29. A school district _____ have mandatory maternity leave rules that require expectant teachers to take a leave of absence from a specified time before to a specified time after the expected date of birth.
Must_____ May_____ Must not_____ Don't know_____

30. A school district _____ provide special language-based instruction for limited English-speaking pupils.
Must_____ May_____ Must not_____ Don't know_____

SCHOOL DISTRICT FINANCE AND ORGANIZATION

31. A state _____ limit the way in which federal grants of land may be used when given to the state for the purpose of supporting education (e.g., requiring that such assets not be spent and that only earned interest be expended for the required purpose)
Must_____ May_____ Must not_____ Don't know_____

32. A school district _____ have a funding system that relies largely on the local property tax when that school district offers at least a minimum education to all pupils without discriminating against any recognized disadvantaged group of them.
Must_____ May_____ Must not_____ Don't know_____

33. A school district _____ limit the right to vote in school board elections to residents who either own taxable real property or have children who are students in the school district.
Must_____ May_____ Must not_____ Don't know_____

34. A school district _____ have a requirement that members of the board of education be landowners.
Must_____ May_____ Must not_____ Don't know_____

35. A school district _____ have a statutory procedure which requires ratification by sixty percent rather than by a simple majority of the votes in a referendum election for bond issue approval or additional taxation.
Must_____ May_____ Must not_____ Don't know_____

PERSONAL DATA

A. Position in which you serve:

Teacher _____

Principal _____

Superintendent _____

Board Member _____

B. Sex:

Male _____

Female _____

C. Years of experience in education:

1 - 5 _____

6 - 10 _____

11 - 15 _____

16 - 20 _____

21 + _____

D. Highest level of formal education:

High school graduate _____

Baccalaureate degree _____

Master's degree _____

Master's plus _____ _____

Education Specialist _____

Doctorate _____

APPENDIX C

COVER LETTER

East Tennessee State University
Department of Supervision and Administration • Box 19000A • Johnson City, Tennessee 37614-0002 • (615) 929-4415, 4430

November 26, 1984

William P. Abegglen
Department of Supervision
and Administration
East Tennessee State University
Box 19,000A
Johnson City, Tennessee 37614

Dear Colleague:

I am a doctoral candidate in the Department of Supervision and Administration at East Tennessee State University. My dissertation is entitled "A Survey to Determine Knowledge of United States Supreme Court Decisions Affecting Education Possessed by Public School Teachers, Administrators, and Board Members."

This study will attempt to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, administrators, and board members; to determine if significant differences exist among respondents when classified according to number of years experience in education and level of education.

The successful completion of this study depends on your willingness to respond to the enclosed survey instrument. Your assistance will be deeply appreciated. Will you take a few minutes of your busy day to complete the enclosed form and return it in the enclosed stamped evelope.

Responses will be reported by group totals only. You can be assured that the information you provide will be kept strictly confidential and that no individual will be identified in any way in this study. You will notice a code number on the enclosed instrument. This code number will be used only to facilitate follow-up techniques and will not be used to identify respondents.

Please return the completed instrument at your earliest convenience. Allow me to thank you in advance for your assistance in conducting this study.

Sincerely yours,

William P. Abegglen

William P. Abegglen
Doctoral Candidate

WPA:chc

APPENDIX D

FOLLOW-UP LETTER

East Tennessee State University
Department of Supervision and Administration • Box 19000A • Johnson City, Tennessee 37614-0002 • (615) 929-4415, 4430

January 4, 1985

William P. Abegglen
Department of Supervision
and Administration
East Tennessee State University
Box 19,000A
Johnson City, Tennessee 37614

Dear Colleague:

Several weeks ago I mailed you a letter asking that you assist me in my doctoral studies at East Tennessee State University by completing a survey instrument. This survey instrument was designed to determine the knowledge of United States Supreme Court decisions affecting education possessed by public school teachers, principals, superintendents, and board members. Perhaps my original correspondence did not reach you or you were unable to complete the instrument earlier.

If for some reason you have not completed and returned the survey instrument I would appreciate it very much if you would take a few minutes to complete the enclosed form and return it in the enclosed stamped envelope.

Response will be reported by group totals only. You can be assured that the information you provide will be kept strictly confidential and that no individual will be identified in any way in the study.

Thank you very much for your assistance in conducting this study.

Sincerely yours,

William P. Abegglen

William P. Abegglen
Doctoral Candidate

WPA:chc

VITA

WILLIAM PAUL ABEGGLEN

Personal Data:	Date of Birth: March 12, 1946 Place of Birth: Olney, Illinois Marital Status: Married to Sue Richardson Abegglen
Education:	Public Schools, Olney, Illinois. Lincoln Christian College, Lincoln, Illinois; ministerial science, B.A., 1968. Eastern Illinois University, Charleston, Illinois; counseling and guidance, M.S. in Education, 1974. Indiana University, Bloomington, Indiana; counseling and quidance. East Tennessee State University, Johnson City, Tennessee; educational administration, Ed.D., 1985.
Professional Experience:	Teacher and coach, Helmsburg Elementary School, Brown County, Indiana, 1974-77. Teacher, quidance counselor, and coach, Washington College Academy, Washington College, Tennessee, 1978-80. Doctoral Fellow, East Tennessee State University, Johnson City, Tennessee, 1980-82. Principal and teacher, Keokuk Christian Academy, Keokuk, Iowa, 1982-present.