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ASSESSING THE REASONABLENESS OF SCHOOL DISCIPLINARY ACTIONS: HAIRCUT CASES ILLUMINATE THE PROBLEM

EDWARD T. LADD*

When school disciplinary actions are challenged in court, arriving at accurate and sophisticated assessments of their *reasonableness* is usually difficult. The following is an attempt to explain why this is so and to point out certain conditions prevalent in American public school systems which shed light both on the actions of school officials in school disciplinary matters and on testimony concerning them. Because of the number and remarkable complexity of recent cases arising out of the suspension or exclusion from school of long-haired male students, they afford particularly useful case material for such an undertaking.¹

The questions at issue in a typical haircut case are two: (1) Is the requirement legitimate? (2) If so, are the school district's actions with respect to the student who has violated the requirement legitimate?

A discussion follows, first of certain issues involved in the determination of reasonableness in connection with each of these two questions, and then of certain general problems in the assessment of testimony in any case in which school disciplinary practices are challenged.

Deluged with male haircut cases in the past half dozen years, federal courts generally seem to have agreed that school systems (1) have authority to impose such rules for male hair as constitute reasonable means—some courts would say necessary means—for keeping the school environment safe, orderly, and conducive to learning; but (2) do not have authority to impose male haircut rules for other reasons. The courts have differed, however, both in regard to the question of law—how much of a burden the school system carries for justifying the regulations; and in regard to questions of fact—how much credence to give to school authorities' fears of disturbance related to

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1. Issues of *NOLPE NOTES* (publication of the National Organization on Legal Problems of Education) list haircut cases as they come to the Editor's attention. For a fairly complete summary of cases as of July, 1971, see 6 *NOLPE NOTES*, July 1971, at 2.

long hair, their reports of such disturbance, and their reports of students being distracted from the business of the school.

The first of these issues—justification of the regulation—reflects the courts' disparate views regarding the right to wear one's hair long. Is it a form of symbolic speech, protected by the preferred position of the first amendment, as is, of course, typically argued in briefs for students?² Is it an undifferentiated liberty protected by other amendments?³ Or is it "relatively inconsequential"?⁴ This is a question of law, and perhaps of psychology, sociology, and anthropology as well.

The second difference of interpretation—the effect of long hair on the school environment—hinges on factual situations in contemporary public schools. Fact and alleged fact as to what has been going on in the schools where the cases have arisen make up a tangled jungle. Inquiry into the subject of disciplinary matters in our public schools is needed to bring new interpretations into a common perspective.

Thus far, courts have been asked to explore the legal and factual issues in haircut cases only with regard to the challenged regulation and not with regard to the school district's responses to its violation. Indeed, despite the fact that to the writer's knowledge no case has been litigated in which the school district had not already suspended or excluded the student(s) from school, nor in any case has the question of the legitimacy of the form of action taken been raised directly. At least one court, however, has chosen to comment on it.⁵

This article, setting aside the questions of law, explores the problem of determining the facts.

Although at the present writing, the haircut problem might seem to be settled in eight of the nine circuits, with only the Second

2. This possibility is at least hinted at in *Dunham v. Pulsifer*, 312 F. Supp. 411, 419 (D. Vt. 1970). See also *Crews v. Cloncs*, 303 F. Supp. 1370, 1376 (S.D. Ind. 1969).

3. *E.g.*, *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970).

4. *Karr v. Schmidt*, 460 F.2d 609, 615 (5th Cir. 1972). For a similar view see *Davis v. Firment*, 269 F. Supp. 524 (E.D. La. 1967).

5. I find that to deny a 16 year old eleventh-grade male and a 17 year old twelfth-grade male access to a public high school in Wisconsin is to inflict upon each of them irreparable injury for which no remedy at law is adequate. I make this finding by taking judicial notice of the social, economic, and psychological value and importance today of receiving a public education through twelfth grade.

Breen v. Kahl, 296 F. Supp. 702, 704 (W.D. Wis. 1969); *cf.* *Brownlee v. Bradley County, Tenn. Bd. of Educ.*, 311 F. Supp. 1360, 1362 (E.D. Tenn. 1970); *Griffin v. Tatum*, 300 F. Supp. 60, 62 (M.D. Ala. 1969).

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Circuit still to be heard from and the Supreme Court consistently refusing to grant certiorari,⁶ a consideration of the problem is hardly moot. The problem will undoubtedly continue to tear school systems apart and demand courts' attention. Students are increasingly self-assertive and increasingly long-haired, many school officials continue to be intransigent, and litigants will surely continue to hope, with some justification, that judges' sympathies in the matter will surmount unfavorable precedents. Also, the further the courts go in settling the purely legal question, the greater the role that will be played by questions of fact. Changed factual conditions, too, will create occasions for new challenges.

Perhaps more importantly, the difficulties of determining and interpreting the facts in male long-hair cases are essentially those that are likely to arise in any case where disciplinary action against a form of student expression is challenged, for example, in a case involving the preparation or distribution of written materials, the wearing of controversial devices, participation in a protest or demonstration or allegedly disruptive insolent or insubordinate activity.

Requirements and prohibitions placed on the behavior of students in schools fall into two general categories: those which concern forms of behavior that are presumed directly to contribute to, or interfere with, good order (*elemental* requirements); and those which concern other forms of behavior which are presumed to contribute to, or interfere with, such behavior, and thus to affect good order indirectly (*instrumental* requirements).⁷ Some commonly offered justifications for male haircut requirements treat them as elemental and others as instrumental. For purposes of analysis each category of justifications will be considered separately.

FACTUAL JUSTIFICATION FOR MALE HAIRCUT RULES AS ELEMENTAL REQUIREMENTS

It is often asserted in male haircut cases that male long hair has the direct effect of distracting fellow students from their school

6. *Stevenson v. Board of Educ.*, 400 U.S. 957, *denying cert. to* 426 F.2d 1154 (5th Cir. 1970); *Jackson v. Dorrier*, 400 U.S. 850, *denying cert. to* 424 F.2d 213 (6th Cir. 1970); *Kahl v. Breen*, 398 U.S. 937 (1970), *denying cert. to* 419 F.2d 1034 (7th Cir. 1969); *Ferrell v. Dallas Ind. School Dist.*, 393 U.S. 856, *denying cert. to* 392 F.2d 697 (5th Cir. 1968).

7. See E. LADD, *THE GOVERNING OF SCHOOL CHILDREN* (forthcoming).

work. Thus, in one case teachers testified that boys' long hair "attract[s] the attention of other students," that it "[interrupts] the train of thought of both the students and teachers," and that "[o]ther students pay more attention to a boy with long hair than to what the teacher is trying to teach."⁸ Such assertions must be taken seriously, but they must also be subjected to scrutiny.

What does "distraction" mean to a teacher in a public school classroom? Those who work in law offices, chambers, and courtrooms may profit from some refreshing of their memories about ordinary, day-to-day conditions in schools. Most public school classrooms are marked by enormous amounts of waiting and of boredom.⁹ It does not take "a 275 pound football tackle, a 6 foot, 8 inch basketball center, or a comely young woman . . . [a] deformed survivor of polio, a paraplegic accident victim, a blind child"¹⁰ to attract attention. That can be done by phenomena of the slightest interest: construction occurring across the street, an airplane seen through a window, an insect crawling on the floor—or a new hairdo on a student of either sex. In the typical classroom, at times when students fail to be interested in the official proceedings, eliminating one distraction leads to students' attention moving to another, then perhaps still another, until finally the point is reached where students manufacture their own distractions, notably by daydreaming, or are compelled to attend to the subject under discussion out of pure desperation. (In the latter case, however, because motivation is low and unfocused, no learning of consequence is to be expected.) It is as true in the work of teachers as in that of lawyers and judges that when things are going well modest distractors have little effect and are not disturbing. But when student interest in classroom activity wanes (which, for reasons that are in large part beyond teachers' control, is very often the case), there is inattention, which becomes upsetting to teachers, who are likely to blame the difficulty on any possible distractor that can be identified: the supposed distractor is made the scapegoat for the teacher's lack of success in commanding the com-

8. *Jackson v. Dorrier*, 424 F.2d 213, 216-17 (6th Cir. 1970). See also *Crews v. Cloncs*, 432 F.2d 1259, 1265-66 (7th Cir. 1970); *Crews v. Cloncs*, 303 F. Supp. 1370, 1373 (S.D. Ind. 1969).

9. P. JACKSON, *LIFE IN CLASSROOMS* 14-15 (1968); C. SILBERMAN, *CRISIS IN THE CLASSROOM* ch. 4 (1970). See also Frederick Wiseman's documentary film *High School* (1968).

10. Cf. *Watson v. Thompson*, 321 F. Supp. 394, 407 (E.D. Tex. 1971).

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plete and continuing attention of the whole class. But it was not the cause of the problem.

Yet male long hair may sometimes be more than a residual distractor, so to speak; it may be a substantial one. Because hair is a natural attribute and long hair a natural characteristic of males as well as females, male long hair is presumably distracting only where cultural circumstances make it unfamiliar, where someone has directed special attention to it, or where both are the case. In the United States, long hair on male adolescents was for years all but unknown and, although it has spread rapidly, it is still a minority phenomenon, particularly in small towns and rural areas. Even so there are many schools where long hair has arrived and taken over with about the same amount and duration of attention as were commanded at other times by bobby socks, penny loafers, and long trousers. To human beings of all ages, as to laboratory animals, what is novel is inherently and affirmatively attention-catching; but novelty quickly wears off, and other things being equal the distraction comes to an end. Thus, where the strangeness of male long hair does distract students, it would seem important to ask how long the distraction is likely to persist. There seems to be no evidence in the facts of everyday school life to suggest that the novelty effect of male long hair in and of itself is likely to last anywhere near as long as it takes for a case to be settled by a federal court. When, to be sure, a temporary restraining order permits a long-haired student to remain in school, the pending litigation presumably magnifies the long hair's attention-catching character. Otherwise it is in the nature of novelty in hair, as in anything else, to wear off.¹¹ Perhaps this is why in thousands of high schools male hair has not been reported to be seriously distracting.

Male long hair is sometimes made distracting, of course, by being deliberately made a focus of attention by school officials. This evidently occurred in most if not all of the cases that have been litigated.

11. This is suggested in an incisive note in 84 HARV. L. REV. 1702 (1971), whose author(s) presumably had fresher memories of school life than most lawyers and judges. Student-written notes and articles in law reviews tend to reveal not only sympathy with high school students who are in difficulty, but also a strikingly insightful understanding of events in public schools and their underlying dynamics. See especially *School Student Dress and Appearance Regulations*, 18 CLEV.-MAR. L. REV. 143 (1969); Comment, *The Legality of Dress Codes for Students, et al.*, 20 DE PAUL L. REV. 222 (1971); Comment, *The Right to Dress and Go to School*, 37 U. COLO. L. REV. 492 (1965).

Conversations with teachers in college classes, in schools, and at teachers' meetings, as well as vehement statements made in testimony in court cases, make it clear that a substantial number of public school officials are among those "people who are repelled by the sight of a male with hair length and style which in times past has been almost exclusively reserved for the fairer sex. These same persons have regarded long hair as a trademark or symbol of evil activity and as a representative of ideas to which they are opposed."¹² Even persons who do not believe that there is anything inherently wrong about male long hair may find it repugnant. It has been common in the past few years for American parents of male adolescents to feel at first that long hair on their loved ones is disrespectful and repulsive.

Public school officials in particular, though, are likely to react strongly to this new convention. It is common for them to believe it important that the school be characterized by conventional social mores—"decorum."¹³ Many, indeed, feel a professional and personal obligation to prevail upon students to accept and adopt conventional personal habits, including those pertaining to grooming.¹⁴ It is understandable, therefore, that many administrators and teachers have tended to make students very much aware of their objections to male long hair when it has first come on the scene, and that numbers of them have continued to "hassle" students, and thus to invite attention to the unwanted phenomenon. School officials have induced high-status, short-haired students, too, to concern themselves with their fellow-students' long hair,¹⁵ and may have given short-haired students encouragement—or refrained from intervening to stop them—when they have been inclined to harass their long-haired associates.¹⁶ In any case, in as authority-oriented an organization as the typical pub-

12. *Turley v. Adel Community School Dist.*, 322 F. Supp. 402, 410 (S.D. Iowa 1971). See also the record in *White v. Board of Educ.*, No. 71-1051 (D.N.M., Oct. 13, 1970); and the violently emotional statement of one school principal quoted in *Breen v. Kahl*, 296 F. Supp. 702, 705 n.3 (W.D. Wis. 1969).

13. The concept of decorum is central in many of the student dress codes issued by high schools.

14. "Civilizing" and "Americanizing" students has long been part of the public's purposes in maintaining public schools. In the 1940's and 1950's the teaching of "acceptable" personal and social habits was boosted by several forces, including the "life adjustment education" movement. See *EDUCATION FOR LIFE ADJUSTMENT* ch. 12 (H. Douglass ed. 1950).

15. *Gfell v. Rickelman*, 313 F. Supp. 364, 366 (N.D. Ohio 1970); *Karr v. Schmidt*, 320 F. Supp. 728, 733 (W.D. Tex. 1970).

16. *E.g.*, *Massie v. Henry*, 455 F.2d 779, 783 (4th Cir. 1972); *Ferrell v. Dallas Ind. School Dist.*, 261 F. Supp. 545 (N.D. Tex. 1966).

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lic school¹⁷ aspects of behavior that are of evident concern to the man in the front office obviously come to receive attention from everyone.

In effect, then, officials in some schools have focussed a great deal of their own, their colleagues', and their students' attention on male students' long hair, and this often for prolonged periods of time. In Gilbert and Sullivan's *Trial by Jury*, the Usher repeatedly roars, "Silence in Court!" to which, in some productions, an impertinent character retorts that it is the Usher himself who is making all the noise. In haircut cases it has been asserted more than once that where male long hair is distracting, it is so largely because of various forms of attention lavished on it by school authorities. There are persons quite familiar with school conditions but not parties to controversies over male hair who believe this is so.¹⁸ To the writer's knowledge, no disinterested student of the schools has asserted the contrary.

In view of these various considerations, it would seem that the chief argument for male haircut rules as elemental requirements—the claim that long-haired males are distracting—is factually most questionable.

The several remaining arguments for male haircut rules as elemental requirements are comparatively minor.

One argument is that male long hair interferes with its wearer's writing on the blackboard.¹⁹ Another is that it is hard for a teacher and a male student to have eye contact when the latter's hair is long.²⁰ Several concern health and safety factors in general, or specifically in laboratories and shops.²¹ In each case the particular purpose of the haircut rule is to preclude a definite impediment to learn-

17. C. SILBERMAN, *supra* note 9; E. FRIEDENBERG, *COMING OF AGE IN AMERICA: GROWTH AND ACQUIESCENCE* (1965); E. FUCHS, *TEACHERS TALK: VIEWS FROM INSIDE CITY SCHOOLS* (1967).

18. Teachers "with experience at schools which had abandoned rigid hair length rules, testified that under the old system the primary distraction from schoolroom activities consisted of their having to enforce the rule." Brief for Appellee at 41, *White v. Board of Educ.*, No. 71-1051 (D.N.M., Oct. 13, 1970). In another case a principal offered in support of a claim of distraction the testimony of a student body leader that "the long hair of Jackson and Barnes and their disobedience of the school regulation, set off a chain reaction of conversation, speculation and excitement among other students." *Jackson v. Dorrier*, 424 F.2d 213, 217 (6th Cir. 1970) (emphasis added).

19. Brief for Appellant at 3, *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972).

20. Trial transcript quoted in Brief for Appellee at 8, *White v. Board of Educ.*, 448 F.2d 258 (10th Cir. 1971).

21. For a summary, see Comment, *The Legality of Dress Codes for Students et al.*, *supra* note 11, at 237-38.

ing or a definite danger. While many courts upholding male haircut requirements have cited such purposes,²² none has attached central importance to them. Many courts, on the other hand, have recognized that these real problems may arise with female long hair, too,²³ and that schools have learned to solve them satisfactorily without requiring that the hair be cut. Genuine though the problems are, it is unlikely that any court will approve a male haircut rule promulgated for solving them alone, so they require no further discussion.

FACTUAL JUSTIFICATION FOR
MALE HAIRCUT RULES AS INSTRUMENTAL REQUIREMENTS

Instrumental requirements, it will be recalled, are requirements applying to behavior whose presence or absence is in and of itself not important, but which is presumed to be conducive to behavior, or to an abstention from behavior, which is. Two major reasons and several minor ones are advanced for viewing male haircut rules as legitimate instrumental requirements.

It is asserted that the wearing of long hair by males instigates disruption or disorder by virtue of the hair's being a symbolic invitation to such improper forms of behavior.²⁴

It is clear that for many young people male long hair, particularly when it has first appeared in a given school, has been a symbol. It is important, then, to know just what it symbolizes. Students have spoken of growing long hair as a sign of "individualism"²⁵ and of "dissociat[ing] with general society, you know, people that look normal, because [we are] not entirely satisfied with things that are happening like this."²⁶ Coxe, who works with young people sees male long hair as a "nonconformist expression."²⁷ Raywid, a college professor of education who works with the public schools, sees it as an assertion that students have "rights."²⁸ Keniston, a psychologist who has special-

22. See, e.g., *Karr v. Schmidt*, 320 F. Supp. 728, 733 (W.D. Tex. 1970); *Griffin v. Tatum*, 300 F. Supp. 60, 61 (M.D. Ala. 1969).

23. See, e.g., *Crews v. Cloncs*, 432 F.2d 1259, 1266 (7th Cir. 1970).

24. *Freeman v. Flake*, 320 F. Supp. 531, 534 (D. Utah 1970); cf. *Crews v. Cloncs*, 432 F.2d 1259, 1265 (7th Cir. 1970); *Breen v. Kahl*, 296 F. Supp. 702, 705 n.3 (W.D. Wis. 1969).

25. *Lindsey v. Guillebeau*, C.A. 2243 at 4 (N.D. Ga., Oct. 26, 1970).

26. *Crews v. Cloncs*, 432 F.2d 1259, 1261 (7th Cir. 1970).

27. Coxe, *The Great Hair Problem*, 18 *YOUTH*, June 1967, at 2 (1967).

28. Raywid, *The Great Haircut Crisis of our Time*, 48 *PHI DELTA KAPPAN* 150, 155 (1966).

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ized in the study of present-day young people, sees nonconformity of dress, and presumably of hair style, as "demonstrations of dissent," or "distaste and disinterest in politics and society."²⁹ While not mentioning hair style explicitly, Reich, who has explored the dress style of the youth culture carefully, strongly suggests that hair style expresses such themes of that culture as love of nature and of the natural, strong concern with individual freedom, commitment to the wholeness of the self, rejection of status distinctions, and a "shared set of attitudes and values . . . the new unity of youth . . ." ³⁰ A perceptive law review note seems to agree, saying that male long hair expresses both attitudes—if ambiguous ones—and solidarity with others who share them: long hair "is . . . at least in large part, a 'message' directed to the world in general and more pointedly, perhaps, to those whom the wearer regards as being of like mind."³¹ Perhaps it is significant that many of the long-haired students involved in the cases studied are admittedly quiet, well-behaved students.³²

Such evidence as is presently available, then, suggests that in so far as male long hair is intended as a symbol it symbolizes a withdrawing, relatively passive state of mind and feeling. There is, to the writer's knowledge, no evidence that male long hair is intended as a symbol of overt opposition to authority or a call to revolt. Only if it were that or if students interpreted it as being that, it would seem, could it have deleterious practical consequences for the disciplinary situation in a school through functioning as a symbol.

To some school officials, on the other hand, those harmful consequences are just what the hair symbolizes. According to a deposition from one principal, "long hair symbolizes revolution, crime, and dope addiction," and "anyone who wears abnormally long hair, to the decent citizenry, immediately reflects a symbol that we feel is trying to disrupt everything we are trying to build up . . ." ³³ Other school officials are reported to have viewed one student's long hair "as a genuine threat to their own authority"³⁴—presumably by virtue of

29. Keniston, *Sources of Student Dissent*, in E. SAMPSON & H. KORN, *STUDENT ACTIVISM AND PROTEST* 163-64 (1970).

30. C. REICH, *THE GREENING OF AMERICA* 234-39 (1970).

31. 84 HARV. L. REV. 1702, 1707 (1971) (emphasis added).

32. *E.g.*, *Bishop v. Colaw*, 450 F.2d 1069 (8th Cir. 1971); *Karr v. Schmidt*, 320 F. Supp. 728 (W.D. Tex. 1970); *Whitsell v. Pampa Ind. School Dist.*, 316 F. Supp. 852 (N.D. Tex. 1970); *Griffin v. Tatum*, 300 F. Supp. 60 (M.D. Ala. 1969); *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970).

33. *Breen v. Kahl*, 296 F. Supp. 702, 705 n.3 (W.D. Wis. 1969).

34. *Crews v. Cloncs*, 432 F.2d 1259, 1261 (7th Cir. 1970).

its symbolism. A brief for a school district called male long hair a "badge of dissent and rebellion against authority."³⁵ In another case several witnesses called by the school district said that they "saw longer hair as a symbol of disobedience."³⁶

It is not unusual for a symbol, especially a nonverbal one, to have different meanings. Whereas many American school officials have viewed male long hair as a gesture of defiance, some English school officials have seen male *short* hair as the same. Within our own country, clothing decorated with motifs from the United States flag was, in the middle 1960's, a symbol of the counter-culture, but five years later a symbol of patriotic orthodoxy. Even at the same moment in time symbols can mean different things to audiences who bring to them different backgrounds of experience: an Iron Cross means one thing to an adolescent surfer and something quite different to a former victim of Nazi persecution. It seems highly probable that school officials who have seen male long hair as a banner of revolt have been reading into it meanings neither put into it nor seen in it by students.

The factual evidence, then, raises serious doubts about the correctness of one court's finding: "[J]ust what does the wearing of long hair symbolize? What is student Davis trying to express? Nothing really."³⁷ But it raises equally serious doubts about the correctness of a contradictory conclusion reached by another court:

The experts and the evidence in general are in substantial agreement that . . . excessively long hair . . . has become within the fabric of our society a symbol of dissatisfaction and protest to which a substantial number of people . . . respond and with which young minds in the process of resistance to authority are likely to identify without any real ideological view except the testing of parental or school authority.³⁸

35. Brief for Appellant, *Lansdale v. Tyler Junior College*, 41 U.S.L.W. 2195 (5th Cir., Oct. 4, 1972).

36. Brief for Appellee at 7, *White v. Board of Educ.*, 448 F.2d 258, (10th Cir. 1971), quoting the trial transcript. Although the opinion of the court in *Howell v. Wolf*, 331 F. Supp. 1342 (N.D. Ga. 1971), does not mention the fact, the symbolism of male long hair was the primary argument offered orally on behalf of the defense. Principals have been quoted as detecting symbolic protest in "extreme dress," Comment, *The Right to Dress and Go to School*, *supra* note 11, at 494, and in the growing of beards, Friedenbergs, *Ceremonies of Humiliation in School*, 32 EDUC. DIG., Nov. 1966, at 35.

37. *Davis v. Firment*, 269 F. Supp. 524, 527 (E.D. La. 1967).

38. *Freeman v. Flake*, 320 F. Supp. 531, 534 (D. Utah 1970).

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The question of the extent to which symbols either of passive dissent or of rebellion are constitutionally protected goes beyond the present exploration. But how dangerous either kind of symbol is to order in schools is a factual matter. Unfortunately, on this subject the testimony of interested parties is hardly reliable, and it appears that no objective studies have been made. This fact itself no doubt reflects the general belief held within the educational profession that the symbolism of long hair, be it passive or revolutionary, is of no great moment. It has already been shown that nonverbal symbols may change their meanings rapidly. For some students the symbolic content of male long hair seems quite low. Unlike a trumpet call to battle, the phenomenon is focused neither at a particular place nor at a particular time, and is hence rather easy to overlook, ignore, or ridicule. In so far as the symbolism of long hair is calculated to invite fellow-students to revolt, therefore, it is unlikely to be effective.

There is one more way in which male long hair might indirectly encourage violations of good order. There are occasions on which the very fact of a student's doing with impunity something which is viewed—by him or by someone else—as symbolizing impudence or defiance may threaten discipline. It may weaken students' fear of school officials' authority and/or unnerve school officials and impair their capacity or their resolve to do what they are required to do. In such situations, school officials may be able to ignore or overlook the "impudence" or "defiance": such a response has been proven effective and is recommended as good professional practice.³⁹ On the other hand, when a school official does react to supposed symbolic impudence or defiance, the proper procedure is to respond with counter-symbols—either a symbol of his authority, like a reproof (or, if an overt violation has occurred, a reprimand), or a symbol of his power (such as showing his imperviousness to and disdain for the gesture or his ability to ridicule or shame the student who has made it). The effectiveness of these various procedures has not been studied systematically; informal evidence from successful educators suggests that through them challenges to authority that are purely symbolic can be rendered harmless.⁴⁰

39. See, e.g., W. BECKER, D. THOMAS & D. CARNINE, *REDUCING BEHAVIOR PROBLEMS: AN OPERANT CONDITIONING GUIDE FOR TEACHERS* 15, 23 (1969).

40. Such approaches to "insolence" are abundantly illustrated in the literature of school discipline; a combination of several in a single episode is reported by a teacher in N. HENTOFF, *OUR CHILDREN ARE DYING* 100 (1966); See also E. ROTHMAN, *THE*

By the same token, however, it should theoretically be possible for a school official to make the meaning of a symbol of dissidence or revolt stronger, by recognizing and affirming its symbolic content and/or showing signs that it displeases or embarrasses him. Such a response may, of course, lead to a counter-response from students and start a vicious circle of mutual thrusts, much like the vicious circle in which beginning teachers and substitute teachers often get caught.⁴¹ A properly trained teacher or principal, however, knows how to avoid exacerbating a situation in that way.

In summary, there appears to be no reason to believe that any symbol of impudence or defiance will necessarily produce disturbance or disruption in schools, and, apart from the vague and disputed testimony in court cases, there is no substantiated report that male long hair, functioning as a symbol, can effectively do so.

The other major instrumental justification of male haircut requirements rests upon the belief that male long hair tends to be accompanied by several kinds of behavior that are deleterious to the school's proper functioning.

One such behavior is harassment, verbal and/or physical, perpetrated by other students. It is an accepted axiom of good school disciplinary practice that each student be held accountable for his own behavior.⁴² Were it not for the fact that a number of courts have reasoned otherwise, it would be unnecessary even to consider that a school might be sustained in holding a student who has engaged in no provocative act responsible for an assault upon him by a fellow student.⁴³

ANGEL INSIDE WENT SOUR 63 (1970); R. FARLEY, SECONDARY MODERN DISCIPLINE, WITH SPECIAL REFERENCE TO THE "DIFFICULT" ADOLESCENT IN SOCIALLY DEPRESSED INDUSTRIAL AREAS 45-46 (1960).

41. See G. LEVY, GHETTO SCHOOL: CLASS WARFARE IN AN ELEMENTARY SCHOOL (1970). For an extreme example, see E. WUNDERER, PÄDAGOGIK UNGENÜGEND: VERGNÜGLICHE ERLEBNISSE EINES ERZIEHERS 24 (1959). One long-haired student testified that his long hair "may have grown into" an expression of "disrespect for authority or for the 'Establishment' . . . because the regulation itself appears to him to be arbitrary and capricious." Breen v. Kahl, 296 F. Supp. 702, 705 n.2 (W.D. Wis. 1969).

42. See, e.g., Gnagey, *Classroom Discipline*, 3 ENCYCLOPEDIA OF EDUC. 94-99 (1971).

43. See, e.g., Gfell v. Rickelman, 441 F.2d 444 (6th Cir. 1971); Lindsey v. Guillebeau, C.A. 2243 (N.D. Ga., Oct. 26, 1970); Davis v. Firment, 269 F. Supp. 524, 528 (E.D. La. 1967); Ferrell v. Dallas Ind. School Dist., 261 F. Supp. 545 (N.D. Tex. 1966), *aff'd*, 392 F.2d 697 (5th Cir. 1968). *But cf.* Massie v. Henry, 455 F.2d 779 (4th Cir. 1972); Ferrell v. Dallas Ind. School Dist., 392 F.2d 697, 705 (5th Cir. 1968) (Tuttle, J., dissenting).

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Any fighting genuinely centers on male students' long hair obviously requires the presence of that hair as one of its causes.⁴⁴ But in school disciplinary practice, association between phenomena, as a determination that there has been "violence between long and short haired students,"⁴⁵ indicates little about the true nature of the problem and nothing about what corrective measure is called for. One can speculate that judges who have missed this point may have done so because they have unwittingly adopted a conceptualization of schools as bureaucracies or corporations in which the administrators are called upon to manage and manipulate the student-clients as if they were employees whose sole purpose is to carry out orders. In such a model, freedom and individual consideration for students are seen as secondary to the demands of smooth, maximally routinized, efficient operation of the organization.⁴⁶ This type of organization is of questionable efficiency in industry⁴⁷ but has no place in a school system. To be educational, schools must be organized as collections of free individual citizens—students—working under the limited authority of regulatory officials—school district personnel and, in some cases, student government personnel—together composing a creative, microcosmic free society under law.⁴⁸

Other behavioral outcomes reported to be associated with male long hair are these:

Failing to attend school;⁴⁹

failing to keep to class schedule;⁵⁰

failing to be in the mainstream of student life;⁵¹

44. "A cause is a necessary antecedent . . ." but "[c]ausation alone can provide no clue of any kind to singling out those which are to be held legally responsible." W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 237, 239 (4th ed. 1971).

45. *Karr v. Schmidt*, 460 F.2d 609, 617 (5th Cir. 1972).

46. R. CALLAHAN, *EDUCATION AND THE CULT OF EFFICIENCY* ch. 9 (1962).

47. A. GOULDNER, *PATTERNS OF INDUSTRIAL BUREAUCRACY* (1954).

48. Most of the literature of education could be cited in support of this statement. See, e.g., J. DEWEY, *DEMOCRACY AND EDUCATION* (1916); J. FEATHERSTONE, *SCHOOLS WHERE CHILDREN LEARN* (1971); C. E. SILBERMAN, *CRISIS IN THE CLASSROOM* (1970); and studies summarized in Ladd, *Toward an Educationally Appropriate Legal Definition of Disruptive Student Behavior*, 7 *EDUC. AD. Q.* 1 (1971).

49. *Howell v. Wolf*, 331 F. Supp. 1342, 1344 (N.D. Ga. 1971); *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970); *Whitsell v. Pampa Ind. School Dist.*, 316 F. Supp. 852, 853 (N.D. Tex. 1970).

50. *Id.*

51. *Freeman v. Flake*, 320 F. Supp. 531, 534 (D. Utah 1970). See also *Howell v. Wolf*, 331 F. Supp. 1342, 1344 (N.D. Ga. 1971); *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970); *Davis v. Firment*, 269 F. Supp. 524 (E.D. La. 1967).

failing to "cooperate with school authorities;"⁵²
talking excessively, rudely, obscenely, and/or disrespectfully;⁵³
talking in class;⁵⁴
eating and drinking soft drinks in class;⁵⁵
passing combs, combing hair, and getting their hair combed by
classmates in class;⁵⁶
jostling and scuffling in halls;⁵⁷
keeping firecrackers in lockers;⁵⁸ and
destroying bathroom equipment.⁵⁹

These sins of omission and commission are reported by some school officials not only to be associated with, but to result from, the "behavior," of wearing long hair, or perhaps, rather, the omission of the behavior of getting the kind of haircut the school requires.

Accepting at its face value the report that there are such associations, an uninvolved person seemingly could imagine no mechanism to explain the fact that the protein filaments growing out of a young man's scalp, when fifteen inches long, instead of the preferred three to four inches, are the proximate causes of the offenses listed. There is nothing in the fairly extensive literature concerning school behavior that either establishes or explains any such causal connection. Can supposedly intelligent school officials, then, be imagining the connections they believe they see?

A standard procedure for studying unestablished causal relationships is to manipulate the presumed causal factor experimentally and note whether the presumptive effect varies appropriately. In a number of haircut cases evidence of sequences of events resembling such an experiment has been introduced. A year after a dress and haircut code was implemented at one high school, the discipline situation was reported to have "improved immediately";⁶⁰ at another "[i]t was . . . found . . . in at least one instance that students after

52. *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970).

53. *Id.*; *Bishop v. Colaw*, 450 F.2d 1069, 1076 (8th Cir. 1971).

54. *Howell v. Wolf*, 331 F. Supp. 1342, 1344 (N.D. Ga. 1971).

55. *Id.*

56. *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970); *Griffin v. Tatum*, 300 F. Supp. 60 (M.D. Ala. 1969).

57. *Whitsell v. Pampa Ind. School Dist.*, 316 F. Supp. 852, 853 (N.D. Tex. 1970).

58. *Id.*

59. *Id.*

60. *Howell v. Wolf*, 331 F. Supp. 1342, 1344 (N.D. Ga. 1971). *See also Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970).

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giving up long hair, improved in attitude”⁶¹ One principal testified “that he had noticed a great deal of improvement in conduct and performance when a dress code was introduced.”⁶² Conversely, in some cases, doing away with haircut rules is reported to have been followed by a prompt deterioration of discipline.⁶³

Even these pseudo-experiments fail to establish a causal relationship, and that there is none is suggested by the experience of hundreds of schools where haircut regulations appear to have *produced* disciplinary troubles,⁶⁴ as well as the hundreds of other schools where haircut regulations have been abandoned with no injurious consequences for discipline.⁶⁵

On the basis of what is known about school disciplinary practice, it seems reasonable to suppose that if there are schools where the enforcing of male haircut rules has helped to preserve or restore order, the effects are the consequences not of the requirements themselves but of certain veiled communications to students which inhere in, or accompany, their promulgation and/or enforcement. In an as yet unpublished study, it is suggested that when students are reluctant to comply with a certain regulation, they can generally be persuaded to do so by successful communication that the school official has both the determination and the power (in the sociological rather than the legal sense of the term) to bring about their compliance by one means or another.⁶⁶ For a school official to institute and successfully enforce any rule to which students object is for him to convey just such a

61. *Howell v. Wolf*, 331 F. Supp. 1342, 1344 (N.D. Ga. 1971).

62. Brief for Appellee at 6-7, *White v. Board of Educ.*, 448 F.2d 258 (10th Cir. 1971).

63. *Whitsell v. Pampa Ind. School Dist.*, 316 F. Supp. 852, 853 (N.D. Tex. 1970). See also reprint of extensive testimony of administrators in *Schwartz v. Wyffels*, 326 F. Supp. 284 (D. Ore. 1971) in *Documents*, 4 THE TEACHER PAPER, Oct. 1971, at 24. The present writer is aware of substantial additional informal evidence that some schools which have abandoned male haircut rules have had trouble keeping students in compliance with other requirements.

64. Trump and Hunt, *The Nature and Extent of Student Activism*, 53 BULL. NAT'L ASS'N. SECONDARY SCHOOL PRINCIPALS 150, 152-53 (1969).

65. In *White v. Board of Educ.*, No. 71-1051 (D.N.M., Oct. 13, 1970), “school administrators and teachers . . . testified that the elimination of [haircut] rules had caused no disturbance or disruption. . . . [I]n fact, it was their unanimous opinion that the academic environment . . . was enhanced by the elimination or relaxation of hair rules. [Also,] once the rules were relaxed, the harassment of long-haired students all but disappeared.” Brief for Appellee at 4-5. See also Babcock, *What's Troubling High School Students*, 59 TODAY'S EDUC. 32, 36 (1970).

66. See also Ladd, *Moving to Positive Strategies for Order-Keeping with Kids Accustomed to Restrictions, Threats, and Punishments*, 6 URBAN EDUC. 331 (1972).

message. To this extent the hair issue *per se* is irrelevant; any other vehicle for communicating determination and power would do as well.⁶⁷ From a purely pragmatic, Machiavellian point of view, however, a haircut regulation is peculiarly well suited to convey these messages, because it demonstrates, probably better than any other imaginable public school practice could, the official's capability and readiness to "apply the terrible organized force of the state"⁶⁸ even to a matter which, to the state, is essentially inconsequential, but which, to the student, is of great personal moment. It not only "approaches a 'ceremony of humiliation' for the recipient," it *is* one.⁶⁹ As such, it is, temporarily at least, effective.

In the situations where abandoning of male haircut rules has been followed by a deterioration in discipline, the dynamics are analogous. Because of the strongly adversarial climate that prevails in most American high schools today students believe that when school is once under way a strong principal will never abandon a restriction voluntarily. The dropping of any requirement, then, may easily carry—or be accompanied by—a veiled message to students that somehow those in authority are not as strong as had been believed, or have lost some of their resolve, or both, and it may thus invite a breakdown in discipline. But the dropping of a requirement need not carry, or be accompanied by, such a message. Whether there is a breakdown, then, depends entirely on whether or not the school officials allow the unintended messages to be conveyed or affirmatively communicate the opposite.⁷⁰

67. This explains why in some English schools rules against male short hair are believed to function in the same way as rules against male long hair in some American schools. See various articles appearing in *The Times* (London), June 26, 1970, Educational Supplement, at 10, cols. 1-5.

68. *Breen v. Kahl*, 296 F. Supp. 702, 707 (W.D. Wis. 1969).

69. *Lindsey v. Guillebeau*, C.A. 2243 at 4 (N.D. Ga. 1970); See Cloward, *Social Control in the Prison*, in *THEORETICAL STUDIES IN SOCIAL ORGANIZATION OF THE PRISON* ch. 2 (1960); E. GOFFMAN, *ASYLUMS* (1961); Friedenber, *supra* note 36, at 35-37; Garfinkel, *Conditions of Successful Degradation Ceremonies*, 61 *AM. J. OF SOCIOLOGY* 420 (1956).

70. Ladd, *supra* note 66. In one school the elimination of a dress code reportedly left the staff in a state of depression which "removed control of the school from the professional staff"; and in another an administrator reported "that on the day that students were able to back down the authority and judgment of school administrators, students lost respect for the adult." *THE TEACHER PAPER*, *supra* note 63, at 26, 28. It appears that in these cases the deterioration of good order reported was a consequence of school officials' having communicated to students that without the regulations in question they would lack either the desire or the power to regulate student behavior as necessary.

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It is a mistake, then, to interpret a breakdown which follows the dropping of a male haircut requirement as evidence that that requirement contributed per se to discipline. As the successful schools have shown, abandoning a male haircut rule need not communicate the unintended message; officials can find ways other than retaining ceremonies of humiliation to communicate to students that they have as much determination and power to keep order as they need and want.

A BALANCE SHEET ON THE REASONABLENESS OF MALE HAIRCUT RULES

If it is sometimes true, then, that male haircut rules may, through their psychological impact on students, contribute indirectly to order, the question arises whether they are a reasonable vehicle to use. For two reasons it seems that they are not.

First, in the long run they tend to boomerang and exacerbate disciplinary problems.⁷¹ Because they invade students' personal lives in a way that students feel is unwarranted and degrading, and because today's students are not as servile as their predecessors, such regulations ultimately tend to elicit counterattacks against organized authority.⁷² In so far as long hair on males has become part of the "youth culture," and male haircut requirements therefore constitute an attack on that culture and, by implication, on the younger generation generally, they are certain to antagonize and/or alienate greater numbers of students, and to do so more intensely. As a disciplinary device they are self-defeating.

Much more important, however, it seems that in several ways male haircut requirements are countereducational.⁷³ A ceremony of humiliation extracts from the student the implicit admission of his

71. See Trump & Hunt, *supra* note 64. "The boy who grows long hair as a symbolic rejection of traditional social norms will not change his attitude to acceptance if the school forces him to cut his hair, but may become more rebellious instead." *Id.* at 152-53. See also, Scriven & Harrison, *Student Dress Codes—Repressive Regulations of Questionable Legality*, 45 J. SECONDARY EDUC. 291 (1970).

72. In the past, it appears, childrearing practices differed from those of today in that they tended to develop in young people the disposition to defer to authority almost automatically, as is no longer generally the case. See Ladd, *A New Dilemma for School Administrators*, PHI DELTA KAPPAN (in press).

73. See generally, Ladd, *Allegedly Disruptive Student Behavior and the Legal Authority of Public School Officials*, 19 J. PUB. L. 209 (1970).

powerlessness and inferiority. This is the first step in brainwashing. Since education generally, but in particular education for citizenship in a society of free men, requires the nurturing of self-reliance combined with self-control, the effects of degradation ceremonies go counter to educational purposes. The Supreme Court has correctly endorsed the proposition that "a sense of inferiority affects the motivation of a child to learn;"⁷⁴ a sense of utter inferiority and powerlessness destroys that motivation. Also, unlike dress codes, haircut requirements constitute *eo ipso* a rejection of a part of the long-haired student's person, an institutional attack not upon his actions but upon the student himself. Thus, they can be expected to strengthen any tendencies he already has toward feelings of rejection and unworthiness. For a young man near the threshold of adulthood, which now for most practical purposes comes at his 18th birthday, the resultant low self-esteem or self-respect is likely to be damaging, both academically and in terms of his character development.⁷⁵

Also, "virtually any order issued in a school carries an educational as well as a regulatory effect."⁷⁶ If students view a male haircut requirement as lacking logic; as resulting from the personal preferences of other students, teachers, administrators, or members of the community at large; or as constituting an attempt to degrade, it is perceived as an example of injustice. It thus deprives all the students who observe the proceedings of the opportunity to witness at first hand an authority operating according to the principles of liberty under law; it tends rather to convey the opposite impression. The effect is not in the direction of educating students for citizenship in our constitutional system but rather in teaching them that might makes right. Most students of education are well aware that our public school system was set up not so much to offer opportunities to the young as to prepare them to function in our system as it was conceived and launched by the Founding Fathers. That purpose is subverted by school practices which tend to alienate students from the system into which the school is supposed to induct them. Perhaps it is unnecessary to point out that the alienation and disaffection of youth today,

74. *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954).

75. See 84 HARV. L. REV. 1703, 1710 (1971). As "injudicious treatment . . . resulting in injury . . . and proceeding from ignorance [or] want of professional skill," ceremonies of humiliation seem to meet the definition of malpractice, BLACK'S LAW DICTIONARY 1111 (rev. 4th ed. 1968).

76. Raywid, *supra* note 28, at 154.

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reflected in school dropout rates, youth crime rates, and drug addiction, constitute one of our society's most critical problems.⁷⁷

Finally, it is worth mentioning that, if successfully enforced, a male haircut requirement, like any other restriction on freedom and individuality, reduces the student body's opportunity to experience and confront the unconventional and the potentially disturbing, and to learn to live with it and deal with it in an orderly way. Such opportunities are, of course, an important part of education, and to

77. A study conducted in 1969 for the Secretary of Health, Education, and Welfare reported that high school unrest focused on the "dehumanization of institutional life." Dress and haircut regulations constituted one of five major categories of causes of high school incidents. "School boards must," the director of the study added, "find alternatives to the 'tight ship' syndrome that characterizes the regimented life a student faces . . . in our high schools [T]he students in our schools . . . need more respect." Anrig, *Those High School Protestors: Can Boards Put Up With Much More?*, 157 AM. SCHOOL BOARD J. 20 (1969). A survey conducted by the National Association of Secondary School Principals in 1969 found that in the three out of five secondary schools reporting recently having experienced "active protest" of some type, 82 per cent of the protests were directed against school regulations, with dress and hair requirements leading the list of complaints. Trump & Hunt, *The Nature and Extent of Student Activism*, 53 BULL. NAT'L ASS'N OF SECONDARY SCHOOL PRINCIPALS 150 (1969).

A Columbia University study has found that "the majority of high school students . . . see themselves as relatively powerless"; they are greatly concerned about alleged instances of "arbitrary behavior" on the part of school officials; they have a "great sense of helplessness"; dissatisfaction is "almost universal" among them; "most students are angry, hostile and frustrated [and] want to change the system." J. DECEGO, A. RICHARDS, F. SUMMERS, J. HARRISON, E. BRUSSEL & J. MANDEL, CIVIC EDUCATION FOR THE SEVENTIES: AN ALTERNATIVE TO REPRESSION AND REVOLUTION 40-41 (1970). A National Education Association study has tended to confirm the finding, Address by George G. Gumeson, NEA Convention, June 30, 1971, as has a Carnegie Corporation study. C. SILBERMAN, *supra* note 9.

The respected Purdue Opinion Panel reported in 1970 that 40 per cent of high school students agreed with the view that

[s]chools are factories. Students are the raw material of the factory, shoveled, cleaned, and pruned, shipped out to the consumer markets . . . and then forgotten.

31 per cent reported that

[t]he atmosphere of the high school is repressive, nonproductive and inhuman.

Instead of educating young people, the high school attempts to press upon them the bankrupt values of a decaying society.

These views are less strong, however, in schools where students believe that school authorities "treat students as responsible individuals, are willing to listen to students' opinions and to use students' suggestions, . . . really understand students of their age," etc. PURDUE UNIVERSITY MEASUREMENT AND RESEARCH CENTER, HIGH SCHOOLS IN 1970: A STUDY OF THE STUDENT-SCHOOL RELATIONSHIP 22-23 (1970).

See also THE REPORT OF THE PRESIDENT'S COMMISSION ON CAMPUS UNREST (1970); K. KENISTON, THE UNCOMMITTED: ALIENATED YOUTH IN AMERICAN SOCIETY (1965); M. MEAD, CULTURE AND COMMITMENT: A STUDY OF THE GENERATION GAP (1970); T. ROSZAK, THE MAKING OF A COUNTER CULTURE: REFLECTIONS ON THE TECHNOCRATIC SOCIETY AND ITS YOUTHFUL OPPOSITION (1969); J. SIMMONS & B. WINOGRAD, IT'S HAPPENING: A PORTRAIT OF THE YOUTH SCENE TODAY (1966).

the extent that they are missing from a school environment, the environment is provincial and sterile, and less stimulating, maturing, and educational.

It may be instructive that almost without exception the extensive professional literature on school disciplinary procedures refuses even to consider haircut regulations as a legitimate disciplinary device.⁷⁸ Such serious written materials as deal with the subject universally condemn them.⁷⁹ With the independent evidence so strongly on the side of those who argue that male haircut requirements in fact are inappropriate in public schools, it would seem that courts should re-

78. See, e.g., *Discipline*, in THE ENCYCLOPEDIA OF EDUCATIONAL RESEARCH 292 (4th ed. 1969) [hereinafter cited as ENCYCLOPEDIA]; Gnagey, *supra* note 42 says: If a regulation really has nothing to do with the learning of appropriate school behaviors, it may be difficult for students to accept. Especially at the high school level, students will become uneasy and rebellious about rules that do not make sense to them in terms of what education is all about. Regulations concerning length of hair . . . seem to fall perennially into this classification. *Id.* at 95. See also CONFLICT IN THE CLASSROOM (N. Long, W. Morse & R. Newman, eds. 1965); R. FARLEY, *supra* note 40; W. GNAGEY, THE PSYCHOLOGY OF DISCIPLINE IN THE CLASSROOM (1968); C. MADSEN, TEACHING/DISCIPLINE: BEHAVIORAL PRINCIPLES TOWARD A POSITIVE APPROACH (1970); M. MEACHAM & A. WIESEN, CHANGING CLASSROOM BEHAVIOR (1969); O. PARODY, THE HIGH SCHOOL PRINCIPAL AND HIS STAFF DEAL WITH DISCIPLINE (1961); F. REDL & D. WINEMAN, CONTROLS FROM WITHIN (1952); G. SHEVIAKOV & F. REDL, DISCIPLINE FOR TODAY'S CHILDREN AND YOUTH (1944).

79. Gnagey, *supra* note 42; Friedenber, *supra* note 36; Halleck, *Hypotheses About Student Unrest*, 57 TODAY'S EDUCATION (1968); Ladd, *supra* note 48; Raywid, *supra* note 28; Scriven & Harrison, *supra* note 71; Van Til, *The Hair Decision of 1973*, 41 CONTEMP. EDUC. 146 (1970). The National Education Association's CODE OF STUDENT RIGHTS AND RESPONSIBILITIES (1971), says that "regulation of physical appearance may not only infringe on protected rights, but discriminate invidiously." *Id.* at 30. That organization joined, incidentally, in filing an amicus brief opposing male haircut regulations in the case of *Lansdale v. Tyler Junior College*, 41 U.S.L.W. 2195 (5th Cir., Oct. 4, 1972).

The American Federation of Teachers has taken the position that students should have the right to "choice of one's own dress and grooming," N.Y. Times, Aug. 20, 1970, at 15, col. 1. The Commission on Education and Human Rights of the most respected honorary education fraternity, Phi Delta Kappa, has endorsed the view of the American Civil Liberties Union, found in ACADEMIC FREEDOM IN THE SECONDARY SCHOOLS (1968), which defines "personal adornment" as a form of "self-expression" to be protected "along with other liberties." *Id.* at 19. The 1970 White House Conference on Children declared that children's rights in school should include, among others, "freedom to follow their own taste in clothing and grooming." WHITE HOUSE CONFERENCE ON CHILDREN, REPORT TO THE PRESIDENT 348 (1971).

The American School Board Journal, editorializing, has attacked

Those silly "codes." Those outrageous, arbitrary, fruitless, presumptuous, smart alecky, meddling, haughty, holier than thou, capricious, suppressive, officious, self-defeating, dangerous sallies that attempt to dictate to U. S. citizens, of all people, what they may wear or how long their hair is to be . . . Those violations of constitutional rights that are scalding school boards in community after community.

157 AM. SCHOOL BOARD J. 6 (1969).

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quire their defenders to present much stronger factual cases than they have thus far done.

SCHOOL OFFICIALS' RESPONSE TO VIOLATIONS

When school officials wish male students to wear their hair short, and a student refuses to comply with that wish, what actions on the part of officials could be classified as reasonable means for achieving the school's purposes?

The school's overriding purpose is to educate. Indeed, the constitutional purpose of state public school systems is to educate all the young except those who choose to obtain an adequate education elsewhere. So that this end may be achieved, and because the school is a "host," school officials must maintain order,⁸⁰ a task which will sometimes call for their setting requirements which severely limit the freedom of disrupters and dissidents.⁸¹ A school's disciplinary requirements, then, are to be enforced not for their own sakes, but as means for allowing each of the young persons who come to the school or will come to it later to obtain the education due him.⁸² It seems inescapable, then, that the means by which rules are enforced should be consistent with the school's ultimate purpose and should promote and not interfere with the education of each of the school's clients.

This set of assumptions suggests that exclusion of a student from public school for a substantial length of time—a procedure which has been finally resorted to in all the litigated haircut cases—is inconsistent with the school's mission.

There are many alternative methods which may be used to influence students to comply with norms of the type in question. Not with the intention to engage students of the law in the making of disciplinary decisions, but to illustrate the variety of procedures avail-

80. Goldstein, *The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis*, 117 U. PA. L. REV. 373 (1969).

81. S. BAILEY, *DISRUPTION IN URBAN PUBLIC SECONDARY SCHOOLS* 34-36 (1970).

82. For practical purposes it now seems to be an established federal constitutional principle that free public education is a right of every young citizen. Indeed, state constitutional provisions, too, in most if not all states would seem to make it a right, even though courts permit it to be denied. Exclusion of students from public schools has a long and respected history, but its constitutional legitimacy appears to be about as questionable as the segregation of public students by race—and for the same basic reason. In Great Britain, incidentally, no students of school age may be excluded from the public school system. R. FARLEY, *supra* note 40, at 19.

able to those whose duty it is to make them, several kinds will be mentioned.

A great body of research literature shows that "planned ignoring" can be extremely successful in influencing students to refrain from unwanted behavior. The usefulness of this procedure is limited, of course, to situations where the requirement has not been officially laid down, and where there is no strong drive pushing the student into the behavior in question. It is particularly effective in elementary schools but under proper conditions works well in high schools, too.⁸³

High school teachers typically deal successfully with a great deal of classroom distraction and potential disruption by changing students' seating. If students' hair seems likely to be distracting or seditious, putting it out of sight in the back of the room almost always neutralizes its influence. This procedure, too, however, presupposes that the objection to male long hair has not yet been crystallized into a formal requirement.

Frequent and/or extensive friendly conversations between students and other persons seem to have proven themselves the most effective single procedure for influencing students' behavior. This can be conversation with individuals—teachers, principals, counselors, classmates—or rap sessions with groups. It may have to take place over a period of weeks or even months.⁸⁴

Another effective way of influencing students is to make the desired behavior in some fashion rewarding. One student who became involved in a court case because he would not sacrifice the individualism represented in his hair style under pressure from a school principal had already done so once in return for a used stereo set offered him by his brother.⁸⁵ Teachers and principals have a variety of possible rewards at their disposal, from personal friendliness to prestigious responsibilities, which they can hold out as positive inducements for getting students to comply with rules they find distasteful.

It is inherent in the nature of the law that those in that field tend generally to think first of punishment, as a method of bringing about compliance with a requirement, when an educator should think

83. W. BECKER, *supra* note 39; F. REDL & D. WINEMAN, *supra* note 78, at 158-60.

84. CONFLICT IN THE CLASSROOM, *supra* note 78; W. GLASSER, REALITY THERAPY: A NEW APPROACH TO PSYCHIATRY ch. 6 (1965); E. ROTHMAN, *supra* note 40, at 119.

85. *Lindsey v. Guillebeau*, C.A. 2243 (N.D. Ga., Oct. 26, 1970).

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of it last. The fact is that, by and large, those who have studied the subject find punishment by itself to be a relatively ineffective device for influencing students' behavior as well as educationally risky.⁸⁶ But there are special situations in which it is useful. The most effective kinds of punishment seem to be requiring the performance of chores; afterschool detention; and, above all, the withholding and withdrawing of privileges—the latter possible, obviously, only if privileges have previously been instituted or earned.⁸⁷ Any one of these may put enough pressure on the violator of a haircut requirement to influence him to yield, and/or to establish that the requirement cannot be violated with impunity.

While any of the types of methods listed may bring students into compliance with haircut requirements, none of them removes the students' long hair from the classroom, where it is presumed to present a danger or threat. Should the danger be regarded as clear and present, there are at least two other procedures which may be followed. The student may be placed on in-school suspension, partial or full, that is, excluded from one or more of his regular classes, while still being required to attend school. A student suspended in school may be required to sit in a given room, to study there, or to do chores somewhere in the building or on the grounds. In any of these cases he remains under the supervision of school officials and accessible to educational influences, and the school continues to perform its assigned mission with respect to him.

The other alternative, available only in larger communities, is to transfer the student to another school, where, being a stranger, and perhaps an oddity, he is unlikely to be a disruptive influence. While he may still continue to violate the haircut requirement, the fact that he is on disciplinary transfer means that his punishment also continues.

Thus, if the school has a right to object to male long hair there are a variety of ways in which it can deal with the transgressors. There are "political" as well as "legal" ways in which school officials can deal with the problem, and, if it is to be dealt with "legally," it may be treated as anything from a capital crime to a mere violation.

86. W. GLASSER, *SCHOOLS WITHOUT FAILURE* (1969); Skinner, *Why Teachers Fail*, *SATURDAY REVIEW*, Oct. 16, 1965, at 80.

87. K. LARSON & M. KARPAS, *EFFECTIVE SECONDARY SCHOOL DISCIPLINE* 154-58 (1963); O. PARODY, *supra* note 78, at 79-80.

Since a suspension for any length of time contradicts in some measure the purpose for which the public has created the school and mandated attendance (that of providing education for all future citizens), there is at least a heavy burden of justification on an administrator who chooses to suspend a student; indeed, such a decision may be incapable of justification.

THE FALLIBILITY OF TESTIMONY ON
BEHALF OF SCHOOL DISTRICTS

The testimony of school administrators, teachers, and students appears to have done little to help courts understand the issues discussed above. It has tended, rather, to misrepresent those issues, distorting the tenuous, complex, and never inexorable relationships between male long hair and disciplinary difficulties, and to pass over the variety of alternative ways of influencing students to comply with a haircut convention or requirement. There appear to be two reasons for this.

First, although it is not generally recognized, some school principals are essentially only journeyman educators who have come from rather limited backgrounds, have had mediocre education and training, and have had only provincial experience. Like journeymen in other occupations, a large number of principals, not having had the benefit of broad study under leaders or scholars in their profession, have, instead, learned a set of vocational habits by observing, listening to, and imitating the practices of persons already at work in the field, and adapting those practices to their own personalities and preferences.⁸⁸ The courses in school administration which nearly all school administrators have taken at colleges or universities, have concerned themselves in large measure with general theory, supervision, and administrative mechanics, to the exclusion specifically of the complexity of disciplinary matters.⁸⁹ A survey of several dozen male haircut cases reveals none, incidentally, in which the school district has cited educational research or literature to back up its stand, or called edu-

88. D. MITCHELL & A. HAWLEY, LEADERSHIP IN PUBLIC EDUCATION STUDY: A LOOK AT THE OVERLOOKED 32-33 (1972).

89. Gregg, *Preparation of Administrators*, in ENCYCLOPEDIA, *supra* note 78, at 993-96. An informal survey of recent textbooks in school administration made by the present writer shows no significant discussion, if any, of problems of school discipline.

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cational experts as witnesses. In general, journeyman school administrators can be expected to be more common in the kinds of communities in which haircut cases have typically arisen.⁹⁰

Second, for a complex of reasons, school officials concerned with discipline operate under great pressure to assert and defend their authority over students.

Of all public officials, school administrators and teachers are the ones whose dealings with the public at large are the most direct and extensive. These dealings are, furthermore, in an area of great sensitivity—the public's children and young people. This situation focuses local public opinion constantly on school administrators' performance. At the same time, school administrators, like other local government officials, are both financially and politically very much at the mercy of that local opinion.⁹¹ In school circles it is often said only half jokingly that the main job of a principal is to quiet down irate parents, so that, it might be added, the next bond issue and budget are more likely to be approved, and the superintendent less likely to lose his job.

School administrators' peculiar vulnerability tends to make them feel that they must keep tight control over everything that goes on in their jurisdictions, and that they and their staffs must hang together more tightly, probably, than do members of most other organizations providing professional services. For the typical principal, the safest course is to collect into his own hands all the authority that he can, to share as little of it as possible, and to press back firmly the least instances of nonconformity or independence on the part of teachers or students that might conceivably lessen that authority or cause him any embarrassment or trouble, either directly or through their impact on his superordinates.⁹²

Compounding the pressures on principals to be authoritarian is the fact that the very public on whose favor they depend tends to want strict limits put on students' liberties and strict enforcement of

90. With the interesting exception of three southern cities—Dallas, Nashville, and New Orleans—the cases all seem to have arisen in small towns and rural areas.

91. R. CALLAHAN, *supra* note 46.

92. See, e.g., A. Vidich & C. McReynolds, High School Principals Study Seminar: Final Report (1969) (prepared for the Department of Health, Education and Welfare, Office of Education, National Center for Educational Research and Development, Project No. 6-2727); Willower, *The Teacher Subculture and Rites of Passage*, 4 URBAN EDUC. 103 (1969).

rules. Several studies in recent years have shown the American public as a whole to be consistently concerned about the need for "more discipline" in schools; indeed, one national poll found parents attaching more importance to discipline than to intellectual training.⁹³ Public pressures of this sort have been mentioned, incidentally, in some haircut cases.⁹⁴

Because of these interrelated circumstances, many administrators go to great lengths to strengthen and maintain their control over teachers and students. They allow no correctives to their own fallibility, no effective grievance procedures, let alone such an independent channel as is represented in the military by the Inspector General Corps.

An effective form of latent power which superordinates may have over subordinates is the reputation of winning every contest; lacking certain other resources which supervisors in other organizations commonly possess, school administrators tend to lay great store by having just such reputations. Many school administrators seem to feel, in fact, that in any confrontation with students or teachers they simply must win, or the whole structure of order will come tumbling down.⁹⁵ The result is that many of today's high schools have some of the overtones of occupied areas, with the administrators and the students basically mistrusting one another, and the former doing business with the various categories of the latter in varying degrees of tension. While the student eruptions of 1968-70 were anomalous,⁹⁶ the basic adversarial relationship out of which they came was of long standing, persists, and appears to be worsening.⁹⁷ Because most school

93. *Crisis in the High Schools: The LIFE Poll*, LIFE, May 16, 1969, at 22. See also Gallup, *Fourth Annual Gallup Poll of Public Attitudes Toward Education* 54 PHI DELTA KAPPA 33 (1972).

94. *E.g.*, Howell v. Wolf, 331 F. Supp. 1342, 1343 (N.D. Ga. 1971); Lindsey v. Guillebeau, C.A. 2243 (N.D. Ga., Oct. 26, 1970).

95. In a number of cases school officials have argued that because the rule had been promulgated it must be upheld, suggesting that school officials' authority would be jeopardized if limits were imposed on it from outside. *E.g.*, Watson v. Thompson, 321 F. Supp. 394, 404 (E.D. Tex. 1971); Breen v. Kahl, 296 F. Supp. 702, 704 (W.D. Wis. 1969).

96. M. LIBARLE & T. SELIGSON, *THE HIGH SCHOOL REVOLUTIONARIES passim* (1970); D. DIVOKY, *HOW OLD WILL YOU BE IN 1984? passim* (1969); J. BIRMINGHAM, *OUR TIME IS NOW, passim* (1970).

97. See the evidence concerning alienation of students from school at note 77 *supra*. See also M. CHESLER & J. FRANKLIN, *INTERRACIAL AND INTERGENERATIONAL CONFLICT IN SECONDARY SCHOOLS* 3-9, 27-44 (1969); C. GORDON, *THE SOCIAL SYSTEM OF THE HIGH SCHOOL* (1957); W. WALLER, *THE SOCIOLOGY OF TEACHING* (1932); D. WILLOWER, T. EDELL & W. HOY, *THE SCHOOL AND PUPIL CONTROL IDEOLOGY* (1967);

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administrators seem to feel professionally obligated and personally committed to fight any challenge to their authority to the bitter end, they can be expected to fall prey to rationalization about the factual situations in their schools, the threats, and the dangers, and even about their own motives.⁹⁸

Professor Haskell has written convincingly as follows:

What is suggested is that the courts allow experts in other fields such as public school administration considerable elbow room in their work even if it results in some mistakes, particularly where the student interest involved does not seem to be one of great importance. . . . I would suggest that the only basis for constitutional invalidity should be that the regulation bears no relation to the maintenance of order in the school or concentration in the classroom.

. . . It stands to reason that the school authorities know more about maintaining order in the corridors and concentration in the classrooms than judges do.⁹⁹

From this premise he concludes that courts should in general avoid questioning school officials' disciplinary decisions. All too often, unhappily, the conclusion does not follow. The school official cannot always properly be assumed to be an expert, and he can usually be presumed to feel an exceedingly strong vested interest in the outcome of the case. Not only does the conclusion not follow, but, quite the contrary, administrators' testimony must from the start be suspect.

In many, perhaps most cases, school administrators call teachers as further witnesses to the facts. To assess the objectivity and reliability of the latter's reports, too, one must consider the sociology of the school. The power which principals hold over teachers is of a different kind than that which supervisors ordinarily have over those they supervise. One form of service which principals are expected to render to teachers, and which the latter regard as very important, is "backing up" the teachers against students and parents. It is part of the mores of the typical public school that principals should do this regardless of the merits of the case and even to the point of lying.¹⁰⁰ One form of

Bidwell, *The School as a Formal Organization*, in HANDBOOK OF ORGANIZATIONS 972 (J. March ed. 1965); Wiseman, *supra* note 9.

98. *Crews v. Cloncs*, 432 F.2d 1259, 1266 (7th Cir. 1970). For another apparent rationalization, see *Westley v. Rossi*, 305 F. Supp. 706, 708 (D. Minn. 1969).

99. Haskell, *Judicial Review of School Discipline*, 21 CASE W. RES. L. REV. 211, 242-43 (1970).

100. Becker, *The Teacher in the Authority System of the Public School*, 27 J. EDUC. SOCIOLOGY 128 (1953).

service which teachers owe principals, in return, is to do their bidding without question. Except in schools whose faculties are strongly organized, it is understood by teachers that when the principal's wish has been made known, theirs is not to reason why. Many teachers, indeed, seem to develop the habit of convincing themselves in advance that whatever their principals will say or do will be right. In many schools, then, if a principal becomes entangled in a situation where he needs backing up, a fortiori if a student challenges him in court, it is a foregone conclusion that teachers called upon to back him up will do so.¹⁰¹

On occasion student leaders are involved in the drawing up or enforcing of regulations or as witnesses in court cases. It is important, therefore, to note certain circumstances commonly affecting the roles which high school student leaders play. For several reasons, those who occupy student leadership posts tend to be students who are amenable to the school administrators' ways of doing things. Students who are known for their independence or for challenging the status quo tend to be unwilling to associate themselves with the system about which they have reservations; they tend to be less popular with their fellow-students, and they are often simply barred from leadership posts, formally or informally, because of administrators' insistence on certain evidences of "responsibility" or "good citizenship."¹⁰² If student leaders are likely to see things the administrators' way in private, it can be supposed that they will do so all the more in open court. This is quite apart from the basic fact that in a school where male haircut rules are being enforced, those who get into trouble over their long hair are inescapably members of a very small, nonconformist minority.

Most of the testimony as to the facts in cases such as those we have considered comes from the mouths of administrators who are in court to defend their own rules and from teachers and students who are subordinate to those administrators and in different ways dependent upon them. State school officials, however, who are in es-

101. In one case a teacher said under questioning that if the principal required him to touch his head to the floor before him three times every morning on coming to work he would do so. *Howell v. Wolf*, 331 F. Supp. 1342 (N.D. Ga. 1971) (unreported testimony). On teachers' servility generally, see Corwin, *Militant Professionalism, Initiative and Compliance in Public Education*, 38 *SOCIOLOGY OF EDUC.* 310, 313-14 (1965).

102. See Graham, *Student Organizations and Activities: Elementary and Secondary*, in *ENCYCLOPEDIA*, *supra* note 78, at 1367.

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entially the same chain of command,¹⁰³ and officials in school administrators' own professional societies¹⁰⁴ also have an interest in supporting a challenged principal or superintendent.

Some students, in contrast, have called presumably disinterested "experts" but marginally qualified ones: teachers and administrators from other districts,¹⁰⁵ a retired school teacher,¹⁰⁶ college teachers of unrelated subjects,¹⁰⁷ psychologists,¹⁰⁸ and a social worker.¹⁰⁹ The writer knows of only one case in which a witness who appears to have been a qualified educational psychologist was called,¹¹⁰ and two in which the student brought in a person with specialized knowledge of the theory and practice of school discipline.¹¹¹ In one case, as has been mentioned, a circuit court had the benefit of a brief submitted by a national professional education association.¹¹²

Without the help either of specialized knowledge of their own or of truly expert witnesses, courts have a poor basis for evaluating the purportedly factual reports and conclusions which litigants and their interested associates offer concerning disciplinary situations and actions. Thus, in the typical disciplinary case, courts are in a poor position to interpret the situation with insight and determine whether a given requirement or the action taken to enforce it is reasonably connected with the achievement of the purpose the public schools are supposed to serve.

103. *See* Breen v. Kahl, 419 F.2d 1034 (7th Cir. 1969).

104. *See* Westley v. Rossi, 305 F. Supp. 706 (D. Minn. 1969).

105. White v. Board of Educ. No. 71-1051 (D.N.M., Oct. 13, 1970).

106. Karr v. Schmidt, 460 F.2d 609 (9th Cir. 1972).

107. *Id.*

108. *Id.*; White v. Board of Educ. No. 71-1051 (D.N.M., Oct. 13, 1970).

109. Howell v. Wolf, 331 F. Supp. 1342 (N.D. Ga. 1971).

110. Breen v. Kahl, 296 F. Supp. 702 (W.D. Wis. 1969).

111. Howell v. Wolf, 331 F. Supp. 1342 (N.D. Ga. 1971); Lindsey v. Guillebeau, G.A. 2243 (N.D. Ga. 1970).

112. Lansdale v. Tyler Junior College, 41 U.S.L.W. 2195 (5th Cir., Oct. 4, 1972).

