321 Md. 532
Court of Appeals of Maryland.

Steven Saunders GIROUARD
v.
STATE of Maryland.

No. 65, Sept. Term, 1989.
|
Jan. 8, 1991.

Synopsis

Defendant was convicted before the Circuit Court for Montgomery County, James S. McAuliffe, J., of second-degree murder, and he appealed. The Court of Special Appeals affirmed, and defendant petitioned for certiorari. The Court of Appeals, Cole, J., held that: (1) words alone are not adequate provocation to mitigate murder to manslaughter, and (2) taunting words of wife in course of domestic argument were not provocation adequate to reduce second-degree murder charge to voluntary manslaughter, as provocation was not enough to cause reasonable man to stab wife 19 times.

Affirmed.

Attorneys and Law Firms

****719 *534** Nancy S. Forster, Asst. Public Defender and George E. Burns, Jr., Asst. Public Defender (Alan H. Murrell, Public Defender, J. Theodore Wiesman, Dist. Public Defender, all on brief), Baltimore, for petitioner.

Valerie J. Smith, Asst. Atty. Gen. (J. Joseph Curran, Jr., Atty. Gen., both on brief), Baltimore, for respondent.

Argued before MURPHY, C.J., ELDRIDGE and RODOWSKY, JJ., and COLE,[**] ADKINS,[*] BLACKWELL [*] and MARVIN H. SMITH (retired), Court of Appeals Judges, Specially Assigned.

Opinion

COLE, Judge.

In this case we are asked to reconsider whether the types of provocation sufficient to mitigate the crime of murder to manslaughter should be limited to the categories we have heretofore recognized, or whether the sufficiency of the provocation should be decided by the factfinder on a case-by-case basis. Specifically, we must determine whether words alone are provocation adequate to justify a conviction of manslaughter rather than one of second degree murder.

The Petitioner, Steven S. Girouard, and the deceased, Joyce M. Girouard, had been married for about two months on October 28, 1987, the night of Joyce's death. Both parties, who met while working in the same building, were in the army. They married after having known each other for approximately three months. The evidence at trial indicated that the marriage was often tense and strained, and there was some evidence that after marrying Steven, Joyce had resumed a relationship with her old boyfriend, Wayne.

***535** On the night of Joyce's death, Steven overheard her talking on the telephone to her friend, whereupon she told the friend that she had asked her first sergeant for a hardship discharge because her husband did not love her anymore. Steven went into the living room

where Joyce was on the phone and asked her what she meant by her comments; she responded, "nothing." Angered by her lack of response, Steven kicked away the plate of food Joyce had in front of her. He then went to lie down in the bedroom.

Joyce followed him into the bedroom, stepped up onto the bed and onto Steven's back, pulled his hair and said, "What are you going to do, hit me?" She continued to taunt him by saying, "I never did want to marry you and you are a lousy fuck and you remind me of my dad."[1] The barrage of insults continued with her telling Steven that she wanted a divorce, that the marriage had been a mistake and that she had never wanted to marry him. She also told him she had seen his commanding officer and filed charges against him for abuse. ****720** She then asked Steven, "What are you going to do?" Receiving no response, she continued her verbal attack. She added that she had filed charges against him in the Judge Advocate General's Office (JAG) and that he would probably be court martialed.[2]

When she was through, Steven asked her if she had really done all those things, and she responded in the affirmative. He left the bedroom with his pillow in his arms and proceeded to the kitchen where he procured a long handled kitchen knife. He returned to Joyce in the bedroom with the knife behind the pillow. He testified that he was enraged and that he kept waiting for Joyce to say she was kidding, but Joyce continued talking. She said she ***536** had learned a lot from the marriage and that it had been a mistake. She also told him she would remain in their apartment after he moved out. When he questioned how she would afford it, she told him she would claim her brain-damaged sister as a dependent and have the sister move in. Joyce reiterated that the marriage was a big mistake, that she did not love him and that the divorce would be better for her.

After pausing for a moment, Joyce asked what Steven was going to do. What he did was lunge at her with the kitchen knife he had hidden behind the pillow and stab her 19 times. Realizing what he had done, he dropped the knife and went to the bathroom to shower off Joyce's blood. Feeling like he wanted to die, Steven went back to the kitchen and found two steak knives with which he slit his own wrists. He lay down on the bed waiting to die, but when he realized that he would not die from his self-inflicted wounds, he got up and called the police, telling the dispatcher that he had just murdered his wife.

When the police arrived they found Steven wandering around outside his apartment building. Steven was despondent and tearful and seemed detached, according to police officers who had been at the scene. He was unconcerned about his own wounds, talking only about how much he loved his wife and how he could not believe what he had done. Joyce Girouard was pronounced dead at the scene.

At trial, defense witness, psychologist, Dr. William Stejskal, testified that Steven was out of touch with his own capacity to experience anger or express hostility. He stated that the events of October 28, 1987, were entirely consistent with Steven's personality, that Steven had "basically reach[ed] the limit of his ability to swallow his anger, to rationalize his wife's behavior, to tolerate, or actually to remain in a passive mode with that. He essentially went over the limit of his ability to bottle up those strong emotions. What ensued was a very

extreme explosion of rage that was intermingled with a great deal of panic." Another defense witness, psychiatrist, Thomas Goldman, ***537** testified that Joyce had a "compulsive need to provoke jealousy so that she's always asking for love and at the same time destroying and undermining any chance that she really might have to establish any kind of mature love with anybody."

Steven Girouard was convicted, at a court trial in the Circuit Court for Montgomery County, of second degree murder and was sentenced to 22 years incarceration, 10 of which were suspended. Upon his release, Petitioner is to be on probation for five years, two years supervised and three years unsupervised. The Court of Special Appeals affirmed the judgment of the circuit court in an unreported opinion. We granted certiorari to determine whether the circumstances of the case presented provocation adequate to mitigate the second degree murder charge to manslaughter.

Petitioner relies primarily on out of state cases to provide support for his argument that the provocation to mitigate murder to manslaughter should not be limited only to the traditional circumstances of: extreme assault or battery upon the defendant; mutual combat; defendant's illegal arrest; injury or serious abuse of a close relative of the defendant's; or the sudden discovery of a spouse's adultery. Petitioner argues that ****721** manslaughter is a catchall for homicides which are criminal but that lack the malice essential for a conviction of murder. Steven argues that the trial judge did find provocation (although he held it inadequate to mitigate murder) and that the categories of provocation adequate to mitigate should be broadened to include factual situations such as this one.

The State counters by stating that although there is no finite list of legally adequate provocations, the common law has developed to a point at which it may be said there are some concededly provocative acts that society is not prepared to recognize as reasonable. Words spoken by the victim, no matter how abusive or taunting, fall into a category society should not accept as adequate provocation. According to the State, if abusive words alone could mitigate murder to manslaughter, nearly every domestic argument ***538** ending in the death of one party could be mitigated to manslaughter. This, the State avers, is not an acceptable outcome. Thus, the State argues that the courts below were correct in holding that the taunting words by Joyce Girouard were not provocation adequate to reduce Steven's second degree murder charge to voluntary manslaughter.

Initially, we note that the difference between murder and manslaughter is the presence or absence of malice. *State v. Faulkner*, 301 Md. 482, 485, 483 A.2d 759 (1984); *State v. Ward*, 284 Md. 189, 195, 396 A.2d 1041 (1978); *Davis v. State*, 39 Md. 355 (1874). Voluntary manslaughter has been defined as "an *intentional* homicide, done in a sudden heat of passion, caused by adequate provocation, before there has been a reasonable opportunity for the passion to cool" (Emphasis in original). *Cox v. State*, 311 Md. 326, 331, 534 A.2d 1333 (1988). *See also, State v. Faulkner, supra; State v. Ward, supra; Whitehead v. State*, 9 Md.App. 7, 262 A.2d 316 (1970).

There are certain facts that may mitigate what would normally be murder to manslaughter. For example, we have recognized as falling into that group: (1) discovering one's spouse in the act of sexual intercourse with another; (2) mutual

combat; (3) assault and battery. *See* *State v. Faulkner*, 301 Md. at 486, 483 A.2d 759. There is also authority recognizing injury to one of the defendant's relatives or to a third party, and death resulting from resistance of an illegal arrest as adequate provocation for mitigation to manslaughter. *See, e.g.*, 40 C.J.S. *Homicide* § 48 at 913 (1944) and 40 C.J.S. *Homicide* § 50 at 915–16 (1944). Those acts mitigate homicide to manslaughter because they create passion in the defendant and are not considered the product of free will. *State v. Faulkner*, 301 Md. at 486, 483 A.2d 759.

[1] In order to determine whether murder should be mitigated to manslaughter we look to the circumstances surrounding the homicide and try to discover if it was provoked by the victim. Over the facts of the case we lay ***539** the template of the so-called "Rule of Provocation." The courts of this State have repeatedly set forth the requirements of the Rule of Provocation:

> 1. There must have been adequate provocation;
>
> 2. The killing must have been in the heat of passion;
>
> 3. It must have been a sudden heat of passion—that is, the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
>
> 4. There must have been a causal connection between the provocation, the passion, and the fatal act.

Sims v. State, 319 Md. 540, 551, 573 A.2d 1317 (1990); *Glenn v. State*, 68 Md.App. 379, 406, 511 A.2d 1110, *cert. denied*, 307 Md. 599, 516 A.2d 569 (1986); *Carter v. State*, 66 Md.App. 567, 571, 505 A.2d 545 (1986); *Tripp v. State*, 36 Md.App. 459, 466, 374 A.2d 384 (1977); *Whitehead v. State*, 9 Md.App. at 11, 262 A.2d 316.

[2] We shall assume without deciding that the second, third, and fourth of the criteria listed above were met in this case. We focus our attention on an examination of the ultimate issue in this case, that is, whether the provocation of Steven by Joyce was enough in the eyes of the law so that the murder charge against Steven should ****722** have been mitigated to voluntary manslaughter. For provocation to be "adequate," it must be " 'calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason.' " *Carter v. State*, 66 Md.App. at 572, 505 A.2d 545 quoting R. Perkins, *Perkins on Criminal Law* at p. 56 (2d ed. 1969). The issue we must resolve, then, is whether the taunting words uttered by Joyce were enough to inflame the passion of a *reasonable* man so that that man would be sufficiently infuriated so as to strike out in hot-blooded blind passion to kill her. Although we agree with the trial judge that there was needless provocation by Joyce, we also agree with him that the provocation was not adequate to mitigate second degree murder to voluntary manslaughter.

[3] ***540** Although there are few Maryland cases discussing the issue at bar, those that do hold that words alone are not adequate provocation. Most recently, in *Sims v. State*, 319 Md. 540, 573 A.2d 1317, we held that "[i]nsulting words or gestures, no matter how opprobrious, do not amount to an affray, and standing alone, do not constitute adequate provocation." *Id.* at 552, 573 A.2d 1317. That case involved the flinging of racial slurs and derogatory comments by the victim at the defendant. That conduct did not

constitute adequate provocation.

In *Lang v. State*, 6 Md.App. 128, 250 A.2d 276, *cert. denied*, 396 U.S. 971, 90 S.Ct. 457, 24 L.Ed.2d 438 (1969), the Court of Special Appeals stated that it is "generally held that mere words, threats, menaces or gestures, however offensive and insulting, do not constitute adequate provocation." *Id.* at 132, 250 A.2d 276. Before the shooting, the victim had called the appellant "a chump" and "a chicken," dared the appellant to fight, shouted obscenities at him and shook his fist at him. *Id.* The provocation, again, was not enough to mitigate murder.

The court in *Lang* did note, however, that words can constitute adequate provocation if they are accompanied by conduct indicating a present intention and ability to cause the defendant bodily harm. *Id.* Clearly, no such conduct was exhibited by Joyce in this case. While Joyce did step on Steven's back and pull his hair, he could not reasonably have feared bodily harm at her hands. This, to us, is certain based on Steven's testimony at trial that Joyce was about 5′1″ tall and weighed 115 pounds, while he was 6′2″ tall, weighing over 200 pounds. Joyce simply did not have the size or strength to cause Steven to fear for his bodily safety. Thus, since there was no ability on the part of Joyce to cause Steven harm, the words she hurled at him could not, under the analysis in *Lang*, constitute legally sufficient provocation.

Other jurisdictions overwhelmingly agree with our cases and hold that words alone are not adequate provocation. *See, e.g., State v. Doss*, 116 Ariz. 156, 568 P.2d 1054 (1977); ***541** *West v. United States*, 499 A.2d 860 (D.C.App.1985); *Nicholson v. United States*, 368 A.2d 561 (D.C.App.1977); *Hill v. State*, 236 Ga. 703, 224 S.E.2d 907 (1976); *Cox v. State*, 512 N.E.2d 1099 (Ind.1987); *State v. Guebara*, 236 Kan. 791, 696 P.2d 381 (1985); *State v. Hilliker*, 327 A.2d 860 (Me.1974); *Commonwealth v. Bermudez*, 370 Mass. 438, 348 N.E.2d 802 (1976); *Gates v. State*, 484 So.2d 1002 (Miss.1986); *State v. Milosovich*, 42 Nev. 263, 175 P. 139 (1918); *State v. Mauricio*, 117 N.J. 402, 568 A.2d 879 (1990); *State v. Castro*, 92 N.M. 585, 592 P.2d 185 (1979); *State v. Best*, 79 N.C.App. 734, 340 S.E.2d 524 (1986); *State v. Butler*, 277 S.C. 452, 290 S.E.2d 1 (1982). One jurisdiction that does allow provocation brought about by prolonged stress, anger and hostility caused by marital problems to provide grounds for a verdict of voluntary manslaughter rather than murder is Pennsylvania. *See Commonwealth v. Nelson*, 514 Pa. 262, 523 A.2d 728, 733–34 (1987). The Pennsylvania court left the determination of the weight and credibility of the testimony regarding the marital stress and arguments to the trier of fact.

We are unpersuaded by that one case awash in a sea of opposite holdings, especially since a Maryland case counters *Nelson* by stating that "the long-smoldering ****723** grudge ... may be psychologically just as compelling a force as the sudden impulse but it, unlike the impulse, is a telltale characteristic of premeditation." *Tripp v. State*, 36 Md.App. at 471–72, 374 A.2d 384. Aside from the cases, recognized legal authority in the form of treatises supports our holding. *Perkins on Criminal Law*, at p. 62, states that it is "with remarkable uniformity that even words generally regarded as 'fighting words' in the community have no recognition as adequate provocation in the eyes of the law." It is noted that

mere words or gestures, however offensive, insulting, or abusive they may be, are not, according to the great weight of authority, adequate to reduce a homicide, although committed in a passion provoked by them, from murder to manslaughter, especially when the homicide ***542** was intentionally committed with a deadly weapon[.] (Footnotes omitted)

40 C.J.S. *Homicide* § 47, at 909 (1944). *See also,* 40 Am.Jur.2d *Homicide* § 64, at 357 (1968).

[4] Thus, with no reservation, we hold that the provocation in this case was not enough to cause a reasonable man to stab his provoker 19 times. Although a psychologist testified to Steven's mental problems and his need for acceptance and love, we agree with the Court of Special Appeals speaking through Judge Moylan that "there must be not simply provocation in psychological fact, but one of certain fairly well-defined classes of provocation recognized as being adequate as a matter of law." *Tripp v. State,* 36 Md.App. at 473, 374 A.2d 384. The standard is one of reasonableness; it does not and should not focus on the peculiar frailties of mind of the Petitioner. That standard of reasonableness has not been met here. We cannot in good conscience countenance holding that a verbal domestic argument ending in the death of one spouse can result in a conviction of manslaughter. We agree with the trial judge that social necessity dictates our holding. Domestic arguments easily escalate into furious fights. We perceive no reason for a holding in favor of those who find the easiest way to end a domestic dispute is by killing the offending spouse.

We will leave to another day the possibility of expansion of the categories of adequate provocation to mitigate murder to manslaughter. The facts of this case do not warrant the broadening of the categories recognized thus far.

JUDGMENT AFFIRMED WITH COSTS.

Judge ELDRIDGE concurs in the result only.

All Citations

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[1] There was some testimony presented at trial to the effect that Joyce had never gotten along with her father, at least in part because he had impregnated her when she was fourteen, the result of which was an abortion. Joyce's aunt, however, denied that Joyce's father was the father of Joyce's child.

Joyce lied about filing the charges against her husband.

Girouard v. State, 321 Md. 532 (1991)

583 A.2d 718

89 S.Ct. 733, 21 L.Ed.2d 731, 49 O.O.2d 222

89 S.Ct. 733
Supreme Court of the United States

John F. TINKER and Mary Beth Tinker, Minors, etc., et al., Petitioners,
v.
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al.

No. 21.
|
Argued Nov. 12, 1968.
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Decided Feb. 24, 1969.

Synopsis

Action against school district, its board of directors and certain administrative officials and teachers to recover nominal damages and obtain an injunction against enforcement of a regulation promulgated by principals of schools prohibiting wearing of black armbands by students while on school facilities. The United States District Court for the Southern District of Iowa, Central Division, 258 F.Supp. 971, dismissed complaint and plaintiffs appealed. The Court of Appeals for the Eighth Circuit, 383 F.2d 988, considered the case en banc and affirmed without opinion when it was equally divided and certiorari was granted. The United States Supreme Court, Mr. Justice Fortas, held that, in absence of demonstration of any facts which might reasonably have led school authorities to forecast substantial disruption of, or material interference with, school activities or any showing that disturbances or disorders on school premises in fact occurred when students wore black armbands on their sleeves to exhibit their disapproval of Vietnam hostilities, regulation prohibiting wearing armbands to schools and providing for suspension of any student refusing to remove such was an unconstitutional denial of students' right of expression of opinion.

Reversed and remanded.

Mr. Justice Black and Mr. Justice Harlan dissented.

Attorneys and Law Firms

****735 *503** Dan Johnston, Des Moines, Iowa, for petitioners.

Allan A. Herrick, Des Moines, Iowa, for respondents.

Opinion

***504** Mr. Justice FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under s 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of

the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld ***505** the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school disipline. 258 F.Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it 'materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school.' Burnside v. Byars, 363 F.2d 744, 749 (1966).[1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion, 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942, 88 S.Ct. 1050, 19 L.Ed.2d 1130 (1968).

****736** I.

[1] [2] The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931). Cf. Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to 'pure speech' ***506** which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Cf. Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965); Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966).

[3] [4] 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. This has been the unmistakable holding of this Court for almost 50 years. In Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and Bartels v. Iowa, 262 U.S. 404, 43 S.Ct. 628, 67 L.Ed. 1047 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent.[2] See also ***507** Pierce v. Society of Sisters, etc., 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948); Wieman v. Updegraff, 344 U.S. 183, 195, 73 S.Ct. 215, 220, 97 L.Ed. 216 (1952) (concurring opinion); Sweezy v. New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957); Shelton v. Tucker, 364 U.S. 479, 487, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1960); Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962); Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629 (1967); Epperson v. Arkansas, 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

****737** [5] In West Virginia State Board of Education v. Barnette, supra, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

'The Fourteenth Amendment, as now applied to the States, protects the citizen 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. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of

our government as mere platitudes.' 319 U.S., at 637, 63 S.Ct. at 1185.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See Epperson v. Arkansas, supra, 393 U.S. at 104, 89 S.Ct. at 270; Meyer v. Nebraska, supra, 262 U.S. at 402, 43 S.Ct. at 627. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, ***508** to hair style, or deportment. Cf. Ferrell v. Dallas Independent School District, 392 F.2d 697 (C.A.5th Cir. 1968); Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538, 30 A.L.R. 1212 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to 'pure speech.'

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

[6] The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949); and our history says that it is this sort of hazardous freedom—this kind of openness—that is ***509** the basis of our national strength and of the independence and vigor of Americans ****738** who grow up and live in this relatively permissive, often disputatious, society.

[7] [8] In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained. Burnside v. Byars, supra, 363 F.2d at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.[3]

***510** On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam.[4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.[5])

[9] It is also relevant that the school authorities did not

purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing ****739** of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement ***511** in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

[10] [11] [12] [13] [14] In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.' Burnside v. Byars, supra, 363 F.2d at 749.

In Meyer v. Nebraska, supra, 262 U.S. at 402, 43 S.Ct. at 627, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to 'foster a homogeneous people.' He said:

> 'In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any Legislature could impose such restrictions upon the people of a ***512** state without doing violence to both letter and spirit of the Constitution.'

This principle has been repeated by this Court of numerous occasions during the intervening years. In Keyishian v. Board of Regents, 385 U.S. 589, 603, 87 S.Ct. 675, 683, 17 L.Ed.2d 629, Mr. Justice Brennan, speaking for the Court, said:
"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, (364 U.S. 479), at 487 (81 S.Ct. 247, 5 L.Ed.2d 231). The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection."

[15] [16] [17] The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students.[6] This is not only an inevitable ****740** part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on ***513** the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others. Burnside v. Byars, supra, 363 F.2d at 749. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional

guarantee of freedom of speech. Cf. Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (C.A.5th Cir. 1966).

[18] [19] Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. ***514** Hammond v. South Carolina State College, 272 F.Supp. 947 (D.C.S.C.1967) (orderly protest meeting on state college campus); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D.C.M.D.Ala.1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive 'witness of the armbands,' as one of the children called it, is no less offensive to the constitution's guarantees.

[20] As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

****741** We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

Mr. Justice STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I ***515** cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195. I continue to hold the view I expressed in that case: '(A) State may permissibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.' Id., at 649—650, 88 S.Ct. at 1285—1286 (concurring in result.) Cf. Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645.

Mr. Justice WHITE, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating by acts or conduct which sufficiently impinges on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in Burnside v. Byars, 363 F.2d 744, 748 (C.A.5th Cir. 1966), a case relied upon by the Court in the matter now before us.

Mr. Justice BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected 'officials of state supported public schools * * *' in the United States is in ultimate effect transferred to the Supreme Court.[1] The Court brought ***516** this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way 'from kindergarten through high school.' Here the constitutional right to 'political expression' asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding ****742** unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is 'symbolic speech' which is 'akin to 'pure speech" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise 'symbolic speech' as long as normal school functions ***517** are not 'unreasonably' disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are 'reasonable.'

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, cf., e.g., Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949), the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—'symbolic' or 'pure'—and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleased and when he pleases. This Court has already rejected such a notion. In Cox v. Louisiana, 379 U.S. 536, 554, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965), for example, the Court clearly stated that the rights of free speech and assembly 'do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.'

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically 'wrecked' chiefly by disputes with Mary Beth Tinker, who wore her armband for her 'demonstration.' ***518** Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker 'self-conscious' in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually 'disrupt' the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era

of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education.[2]
…..

I deny, therefore, that it has been the 'unmistakable holding of this Court for almost 50 years' that 'students' and 'teachers' take with them into the 'schoolhouse gate' constitutional rights to 'freedom of speech or expression.' Even Meyer did not hold that. … The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of ***522** speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, e.g., Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471; Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed. 149.

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in Meyer v. Nebraska, supra, certainly a teacher is not paid to go into school and teach ****745** subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or not of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that 'children are to be seen not heard,' but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in Waugh v. Mississippi University in 237 U.S. 589, 596—597, 35 S.Ct. 720, 723, 59 L.Ed. 1131. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's ***523** freedom of assembly clause. The law was attacked as violative of due process and of the privileges and immunities clause and as a deprivation of property and of liberty, under the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the 'fervid' pleas of the fraternities' advocates and decided unanimously against these Fourteenth Amendment arguments. The Court in its next to the last paragraph made this statement which has complete relevance for us today:
'It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the state and is under the control of the state, and the enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions. It is not for us to entertain conjectures in opposition to the views of the state and annul its regulations upon disputable considerations of their wisdom or necessity.' (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by 'symbolic' ***524** speech. And, as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war 'distracted from that singleness of purpose which the state (here Iowa) desired to exist in its public educational institutions.' Here the Court should accord Iowa educational institutions the same right to determine for themselves to what extent free expression

should be allowed in its schools as it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few ****746** other issues over have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily ***525** refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school ***526** systems[4] in our 50 States. 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.

Mr. Justice HARLAN, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition ****747** that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.

All Citations

393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, 49 O.O.2d 222

Footnotes

[1] In Burnside, the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear 'freedom buttons.' It is instructive that in Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.

[2] Hamilton v. Regents of University of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343 (1934), is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military 'science' could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees. See, e.g., West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943); Dixon v. Alabama State Board of Education, 294 F.2d 150 (C.A.5th Cir. 1961); Knight v. State Board of Education, 200 F.Supp. 174 (D.C.M.D.Tenn.1961); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D.C.M.D.Ala.1967). See also Note, Unconstitutional Conditions, 73 Harv.L.Rev. 1595 (1960); Note, Academic Freedom, 81 Harv.L.Rev. 1045 (1968).

[3] The only suggestions of fear of disorder in the report are these:
'A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.'
'Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed.'
Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; and regulation was directed against 'the principle of the demonstration' itself. School authorities simply felt that 'the schools are no place for demonstrations,' and if the students 'didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools.'

[4] The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that '(t)he Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D.C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views.' 258 F.Supp., at 972—973.

[5] After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication of his article. They reported that 'we felt that it was a very

friendly conversation, although we did not feel that we had convinced the student that our decision was a just one.'

6 In Hammond v. South Carolina State College, 272 F.Supp. 947 (D.C.S.C.1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail enclosure. Cf. Cox v. Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965); Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property. Cf. Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963); Brown v. Louisiana, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966).

1 The petition for certiorari here presented this single question:
'Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum.'

2 The following Associated Press article appeared in the Washington Evening Star, January 11, 1969, p. A—2, col. 1:
'BELLINGHAM, Mass. (AP)—Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.
"I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'
'Todd is a junior in Mount St. Charles Academy, where he has a top scholastic record.'

3 In Cantwell v. Connecticut, 310 U.S. 296, 303—304, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), this Court said:
'The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.'

4 Statistical Abstract of the United States (1968), Table No. 578, p. 406.