A Mock Trial - All characters and incidents are fictitious.
Written by Jay Postel

DISTRICT COURT
DISTRICT OF NORTH HAMPTON

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JACK J. WHITMORE,

Petitioner,

V.

POTTSFIELD CENTRAL
SCHOOL DISTRICT,

Respondent.

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This case involves an appeal to the Supreme Court by Jack Whitmore, a student at Pittsford Sutherland High School

Three issues are presented for our review.

1. Does a student have a right to express their opinion on controversial issues while in school and, if so, does that right extend to the button and statement carved into the hair worn by Jack Whitmore?

2a. Does a student have a right to wear his or her hair in any length or style they choose or may the school adopt a regulation limiting such and, if so, must the regulation rationally relate to a furthering of legitimate educational purpose?

2b. Is it unlawful sex discrimination for a school to regulate hair length and style only for boys?

3. May a student be forced to comply with a dress code adopted by the student body or may the school adopt a regulation dictating a student's attire and, if so, must the regulation rationally relate to furthering a legitimate educational purpose?

The district court has ruled in favor of the students in a ruling by Judge Robert L. Redman. The school district appealed the case to the Twelfth Circuit Court of Appeals where Justices Eeny, Meeny, Miney, Roe and Moe reversed the district's court decision and ruled in favor of the school district.
The case is now being heard by the Supreme Court of the United States.

FEDERAL DISTRICT COURT OPINION
ROBERT L. REDMAN, Justice.

This decision follows a hearing at which evidence was adduced concerning Jack J. Whitmore's suspension from Pottsfield Slingerland High School on April 25, 1996, in connection with his alleged violations of certain regulations of the Pottsfield Central School District. Mr. Whitmore was suspended by the district's administrator, Ralph Stedman, following a hearing which comported fully with all constitutional requirements for due process and equal protection. The district administrator's decision was that Mr. Whitmore be suspended until he is in conformity with the relevant school regulations, but for no less than three (3) days. Mr. Whitmore obtained a stay of enforcement of this discipline until these proceedings have been concluded, and he has continued attending school without interruption.

The relevant facts in this case are that Mr. Whitmore, a black student in the eleventh (11th) grade, was involved in an altercation with two white male students in the cafeteria on April 11, 1996. The evidence establishes that the white students, who were not disciplined, took exception to: (1) a button Mr. Whitmore was wearing; (2) a "statement" reflected on the side of Mr. Whitmore's head; and (3) Mr. Whitmore's attire. Thanks to quick thinking and an immediate response by the monitors, the altercation did not result in physical violence, but the peaceful repast enjoyed by the other 300 or so students in the cafeteria was disturbed. Moreover, Mr. Whitmore's appearance had previously become a source of general student discussion and controversy. It precipitated the formation of two students' groups, Students Against Aryans and Students Against Dissection, the latter of which had led a two (2) day protest/strike by students throughout the tenth (10th) grade biology classes which resulted in over $700 in damage to laboratory equipment.

The source of the disturbance was the white students' specific objection to a button Mr. Whitmore was wearing and his hairstyle and clothing. Mr. Whitmore was wearing a large button, three (3) inches in diameter on his chest which read, "In memory Of.., Choose Life, Oppose Dissection." In the middle of the button was the graphic depiction of a large frog bleeding from a wound inflicted by a scalpel thrust into its side.

Mr. Whitmore's hairstyle was of a bifurcated nature. The right side of his head was covered by hair knotted together in the style popularly known as "dreadlocks." These "dreadlocks" hung down well below Mr. Whitmore's shoulders. The left side of Mr. Whitmore's head was shaved bald, with the exception of a patch over his left ear which read KLAN with a strike through the word. Testimony at the hearing establishes that this statement is meant to be read as "Klan-busters."

Mr. Whitmore was wearing a sleeveless "T-shirt" cut off at the midriff and skintight, latex exercise pants. The button worn by Mr. Whitmore referred to his opposition to the dissection of laboratory animals (frogs and hamsters) in tenth (10th) grade biology classes and identified him as the leader of Students Against Dissection, a

group which he formed and which promoted the strike.

Mr. Whitmore's hair statement referred to his opposition to the believed growth of radical right groups in the area and particularly to the formation of a band of "skinheads" at the school.

Following the disturbance in the cafeteria, the school's principal, Sandy Stone, directed Mr. Whitmore to cease wearing the button, to remove the statement from his head, to cut his hair and to dress in a manner which complied with school regulations. Mr. Whitmore refused and was suspended.

Following the due process hearing, Mr. Whitmore was found to be in contravention of three school regulations. These regulations state:

2.3 Students have the right to express their opinions on issues while in class or through the means of the school newspaper, the Clarion. A student's right to express opinions at times other than stated or through other means is expressly limited to expressions which are not disruptive, are not offensive to others and which are tastefully stated.

6.1 Students generally have the right to govern the length or style of their hair, including facial hair. This right is expressly limited to hairstyles and lengths on male students, in which any portion of the wearer's hair, as it is normally worn, descends lower than the nape of the wearer's neck.

6.5(a) Students generally have the right to wear garments of their choice. A student's garment must, except during physical education class, completely cover the student's underarms and body below the larynx and above mid-thigh, front and back, as well as the soles of the student's feet.

6.5(b) Garments worn by students must not be a danger to the student's health and must not be disruptive, provocative or vulgar.

Mr. Whitmore's hairstyle and hair length were found by the district administrator to have violated Regulation 6.1. His attire was found to be violation of Regulations 6.5(a) and (b). Mr. Whitmore's button and his hair statement were found to be in violation of Regulation 2.3. Mr. Whitmore was ordered suspended until he changed his attire, hair length and hair style and desisted from wearing the frog button.

Mr. Whitmore challenges his suspension on the grounds that the school regulations which he was found to have violated are contrary to the First (1st) Amendment of the Constitution of the United States. The court agrees with Mr. Whitmore.

The wearing of a button expressing an opinion on a topical issue or a statement on the side of one's head opposing groups which preach and attempt to

foster violence and invidious discrimination both are closely akin to "pure speech" and are the types of symbolic acts about which the Free Speech Clause of the First Amendment is concerned. See, Tinker v. Des Moines Independent community School District,- 3-93 U.S. 503 (1969.). The problem presented here does not concern aggressive or disruptive behavior. See, Sullivan v. Houston Independent School District, 307 F.Supp. 1328 (1969).

The courts have repeatedly emphasized the need for affirming the authority of the state's and school's official to limit and control student conduct. However, students do not lose their right to free expression when they enter school. The position taken by some school officials that students may be prevented from expressing themselves, whether about school or national events, unless the school wishes to permit such expression is erroneous.

Similarly, Mr. Whitmore's attire was also a means of expression protected by the Free Speech Clause. Scott v. Board of Education, Union Free School No. 17, 305 N.Y.S.2d 601 (1969). Moreover, Mr. Whitmore's garments may well have been a personal expression of his cultural heritage.

The issues raised by Regulation 6.1 concerning the regulation of students' hair length is more problematic. The courts and states are split on this issue. Some states permit schools to regulate the length of a student's hair where the purpose for regulation is related to a legitimate educational purpose (no such purpose come readily to mind). Other states allow school authorities to freely regulate students' hairstyles without having to justify such rules with a sound educational reason.

This court finds that any limitation on a student's hair length must be related to preventing some interference with the learning and educational process. See, Richards v. Thurston, 304 F.Supp. 499 (1969), Breen v. Kahl, 296 F.Supp. 702, 419 F.2d 1034 (1969), and Bishop v. Colaw, 450 F.2d 1069 (1971). This court rejects the reasons advanced by the school board that long hair is distracting in class to other students, that long-haired students are unsanitary and that students with long hair are a danger to themselves in shop class and gym class. This particular regulation is also suspect because it prevents only male students from growing hair beyond the nape of their necks. Title IX of the Federal Education Amendments of 1972 banned "separate or different rules of behavior... or other treatment" on the basis of sex. See, 34 Code of Federal Regulations Section 106.31(b)(4).

For the above-stated reasons, the student-petitioner's motion to enjoin the school district-respondent from disciplining him for the reasons stated in the district administrator's letter of suspension is granted.

Dated:

Robert L. REDMAN, D.C.J.

COURT OF APPEALS
TWELFTH CIRCUIT

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POTTSFIELD CENTRAL
SCHOOL DISTRICT,

Appellant-Respondent.

V. OPINION

JACK J. WHITMORE,

Appellee-Petitioner.

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Before Eeny, Meeny, Miney, Roe and Moe, Court of Appeals Judges.

This is an appeal from a decision of the District Court, R. Redman, Justice, enjoining the Pottsfield Central School District from suspending Jack Whitmore from attending the Pottsfield-Slingerland High School until such time as he desists from wearing a certain button and alters his hair style and attire.

The District Court declared that the high school's regulation number 2.3 concerning a student's right to express opinions was unconstitutional as an infringement of the Free Speech Clause of the Fire Amendment. We disagree. The District Court cited the Supreme Court's decision in Tinker v. Des Moines Independent Community School District, 393 US 503 (1969) as controlling the determination of this issue. We find, however, that the facts here are distinguishable from Tinker. In Tinker the students sought only to wear a simple black armband. It was not inherently offensive, vulgar or grotesque. Nor can it be said that such an armband was disruptive to the educational process. Here, the student wore a button depicting a frog bleeding from a stab wound with a caption referring to a memorial passage and a battle cry analogous to that of the pro-life forces now carrying on the abortion debate. The potential disturbance caused by such an offensive picture and the reference to the inherently controversial issue of abortion has no place in our palaces of education. Contrary to the finding in Tinker of an "undifferentiated fear or apprehension" of violence, the views expressed by this student's button, and perhaps the depiction contained therein, led to two serious disturbances. A student protest/strike involving a student group led by Mr. Whitmore kept tenth graders out of biology classes for two days and caused extensive damage. A

separate confrontation in the school cafeteria almost escalated into violence.

The prevention of such tensions, especially the racial tensions engendered by the statement carved in Mr. Whitmore's hair, is a legitimate and compelling interest for local school authorities to regulate. Denying Pottsfield-Slingerland High School the right to enforce this small disciplinary rule could impair the rights of its students to an education and the rights of its teachers to fulfill their responsibilities. See, Guzick v. Drebus, 431 F. 2d 594 (1970) and Wise v. Sauers, 345 F. Supp. 90 (1972).

The District Court's decision striking the school's regulation of male students' hair length as unconstitutional is also in error. While students do have a constitutional liberty interest in wearing their hair as they choose, the right is not unlimited. The Fourteenth Amendment of the United States Constitution provides through its Due Process clause that neither state nor local authorities may limit a person's "fundamental" rights only where it can be specifically demonstrated by the authorities that such limitation is necessary to promote a "compelling or overriding" interest. This is called the "strict scrutiny" test and involves such rights as interstate travel, privacy, voting and all rights included in the First Amendment of the United States Constitution. This is a difficult burden for the authorities to meet. This is not the applicable standard in this case. Domico v. Rapides Parish School Board, 675 F. 2d 100 (1982),

In all other cases involving other rights, a "mere rationality" test is applied. Pursuant to this standard, a governmental act limiting a person's rights in some regard does not violate due process if it rationally relates to any possible legitimate end of government. Moreover, the act is presumed valid and the burden is on the challenging party to prove its invalidity. Simply stated it is almost impossible for state or local authorities to fail to show that their action meets this test. In a high school environment, a hairstyle regulation is a reasonable means of furthering the school's interest in teaching hygiene, instilling discipline, asserting authority and compelling uniformity. See Domico v. Rapides Parish School Board, supra, at 102. Students are in a formative period of their lives wherein their values are being molded. The school stands in loco parentis to the student. Living by rules, sometimes seemingly arbitrary is the child's lot. School is of necessity made up of "rules." Such rules establish the time for beginning class, recess, exercise, study periods, outside assignments, athletic activities, playground conduct, use of parking and other school facilities such as lockers--all inexorably intertwined with academic, personal, artistic and cultural pursuits.

The District Court has raised the issue that the school's hair length regulation, number 6.1, is also constitutionally defective because it applies only to male students. This refers to the Equal Protection Clause of the Fourteenth Amendment of the Constitution which prohibits state and local authorities from engaging in acts which by their nature are applicable to and establish different classes of people. It is arbitrary and unconstitutional for the government (including school administrators) to treat similar people in a dissimilar manner. Where the government act involves race or religion, a

"suspect class" is created, the action must pass the "strict scrutiny" test, and the government must establish a compelling state interest. A clear example of this would be a state law denying a mixed race couple the right to adopt a child who was not of mixed race. Classifications that do not involve a "suspect class" must only pass the mere rationality test. Classifications based on sex are close to but not clearly "suspect." Therefore, such classifications must be shown to be based on a fair and substantial relation to achieving an important government objective.

Here, it is obvious that boys' hair is treated differently than girls'; the difference is based on sex. But has this classification been adopted to achieve a significant governmental objective? 4dafind that it has. For the reasons stated above, regulating hair length can be said to have a valid educational objective, which might not be achieved in the absence of such a rule. See, Trent v. Perritt, 391 F. Supp. 171 (1975).

The District Court's ruling striking the school's dress code, number 6.5(a) and (b), is in error for the same reasons. These regulations were adopted to achieve a legitimate governmental purpose, fostering the education process. The dress code was ratified by a bare majority of the student body in 1983. Mr. Whitmore's attire was clearly vulgar and provocative, distracting to students and a health threat to himself. See, Scott v. Board of Education, 305 NYS2d 601 (1969) and Mercer v. Lothamer, 321 F. Supp. 335 (1971).

For the several reasons hereinabove discussed, we reverse the judgment of the District Court. Student Whitmore is ordered suspended until such time as he conforms with school regulations.

Decided