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Department of Justice

ADDRESS

OF

THE HONORABLE ARNOLD I. BURNS
DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

SCHOOL LAW SEMINAR OF THE
NATIONAL SCHOOL BOARDS ASSOCIATION
COUNCIL OF SCHOOL ATTORNEYS

HYATT REGENCY HOTEL
NEW ORLEANS, LOUISIANA
FRIDAY, MARCH 25, 1988
9:00 A.M.

Thank you,.... It is a great pleasure for me to be here with the National School Board Association.

At this particular time, the subject of education is receiving more public attention than at perhaps any other time in American history. Perhaps the catalyst was that 1983 report, A Nation at Risk, which galvanized educators and parents alike and ignited a variety of movements for education reform.

But the preeminence of education in the public mind is not difficult to explain at any time. What question can possibly be more fundamental than that of how the children are to be taught? You could almost say that the fundamental question for each generation is how the next generation will be raised.

This makes education both a major public pre-occupation, and also a perennial political tinderbox. I recall an article in National Review about two years ago in which the writer interviewed leaders of both the New Right and the organized opposition to the New Right, in order to determine just how each side viewed the other. He found that both sides devoted a majority of their concern to issues related to education: textbooks, sex education, creationism, religious schools, you name it -- a whole range of issues stemming from one issue: the who, what, and how of education.

Now, those of us here today represent our nation's public schools. We stand for the American tradition of a community mandate for education. It is our responsibility, and that of other members of the public education community, to be constantly on the lookout for ways to fulfill that mandate better.

I trust I will not exactly be spilling the beans, making news, or shocking anyone if I point out that in some areas of our country, the difficulties that we face make it impossible to fulfill that mandate adequately. There are schools across the nation in which a successful day of school is one in which no violent crime occurs. Any ambition towards actually teaching kids something is thwarted by students who wander the building at will, curse out teachers, carry weapons, and even deal drugs.

Of course this is not a description of the average American public school. Let me emphasize that. But the fact that it happens at all constitutes a crisis that must be faced. Furthermore, it happens particularly in those areas where the opportunities that education provides are most desperately needed. This constitutes a national tragedy.

In this litigious society of ours, intramural disputes in our schools sometimes make it to the Supreme Court. Thus, it is fortunate that the Court has recently shown itself respectful of the needs of schools to exercise authority -- an authority beyond what a governmental entity could normally exercise. Some confusion and difficulties were created for school principals by the decision in Tinker v. Des Moines Independent Community School District, back in 1969. This case involved students who wanted to wear black arm bands to protest the war in Vietnam. They were thus bringing political protest into the classroom. In that case the Court held that school children have First Amendment rights applicable against school authorities. The question that Tinker

left in its wake was, how far could schools go in enforcing discipline?

Well, earlier this year, in Hazelwood School District v. Kuhlmeier, the Court held that Tinker cannot be taken so far as to establish total First Amendment protection for a student newspaper published under school auspices as part of a school course. The students who edited the paper wished to run articles on pregnant students in the school and other controversial topics. Both the school principal and the teacher of the journalism course of which this paper was a part had authority to supervise the editors. It was the principal's decision that the article on pregnancy ran an unacceptable risk of identifying the particular students in question, thus violating their privacy, and since there was little time left before the paper's deadline, he decided to excise the whole page that contained it. This decision was challenged in federal court by the students, and was upheld in the Hazelwood decision.

This decision was in line with the 1986 decision in Bethel School District No. 403 v. Fraser, in which the Court upheld the right of a school to take disciplinary action against a student who used thinly veiled pornographic language in the course of a speech given at the school. In the speech, a male student nominated another male student for student government office, using terms that described not the candidate's abilities as a leader, but his supposed abilities as a lover. The audience, including kids as young as thirteen, hooted and guffawed and

imitated some of the actions being described. Furthermore, the student who made the speech acknowledged that the sexual innuendos were intended. Nonetheless, he sued over the punishment he was given, and the Supreme Court upheld the punishment.

These decisions must have come as a relief to most school principals, not because principals are itching to punish speeches or delete student newspaper articles, but because they have a mandate to maintain the atmosphere required for learning, and the Court has recognized the legitimacy and the urgency of discipline in the fulfillment of that mandate. Like the military, the school is a sector of society with a special mandate and special needs.

In recognizing this, the Court has actually vindicated not just the rights of principals, but more importantly, the rights of the vast majority of students who want to learn, rather than fool around or make a stir. The real victims of the breakdown of discipline in inner-city schools are those students who are there to learn, to work, to make something of their lives. These students are the majority. But in the violence-ridden schools in the inner cities, the serious students are thwarted by a few who are devoid of all serious purpose and who only show up at school to socialize, make trouble, and kill time.

Traditionally, these un-motivated students have been the objects of a great deal of sympathy. And rightly so. Their families have often been victims of racism; they've been raised

in high-crime neighborhoods; and they have borne the brunt of a welfare system featuring perverse incentives that promote the break-up of families.

But the time has come to look also at the plight of the hardest-hit victims: the students who want to study, to learn, to achieve excellence, to break out of the welfare cycle and make use of the opportunities that our society is supposed to provide for those who work hard.

Now, I bring that up because, to the delight of all would-be scholars and their long-suffering parents, the public education system itself is now producing leaders capable of getting students' attention -- not the way that new boy in the story did, but in ways appropriate to the office of school principal. The most famous of them undoubtedly is Joe Clark, principle of Eastside High School in Paterson, New Jersey.

Mr. Clark himself is a former ghetto youth from a welfare background, so he can speak with a certain freedom and moral authority on the need for discipline and how the lack of it deprives inner-city kids of their right to a good education. He can point out with great credibility that a meaningless diploma leads nowhere except right back into another cycle of the poverty treadmill. Or, as he puts it: "They give you a dumb diploma, and then give you welfare to compensate for it."

He is frequently on the P.A. system, exhorting the kids to follow the three priorities that he insists on: "order, pride,

and academic excellence." A typical Joe Clark mini-speech runs like this:

> Remember, we cannot afford to be mendicants, nor can we afford to be mendacious. Look up both words and know how to use them properly.

Mr. Clark takes the trouble to get to know the students at his school, to remember their names and even their particular problems and ambitions. His students know he cares about them. And he has turned Eastside High around.

He's paid a price for it though. He's come under heavy criticism from some who think the trouble-makers cannot be stopped from setting the agenda for the school.

There are other principals like Joe Clark scattered throughout our public school system. One is Frank Parks, who has largely chased drugs out of his school in Washington D.C. And there are others. Their styles naturally differ, because they have different strengths, different weaknesses, and perhaps most importantly, different challenges to face. But they're there.

An effective principal -- an effective teacher -- is one who can inculcate an understanding that learning -- an inquisitive mind -- the acquisition of knowledge and relevant experience -- is the real path to productive and happy lives and the route to a meaningful stake in our society.

A strong principal is only one factor that makes for a good school. For instance, I am told there is now pretty broad

agreement within the public school community that parental involvement is a good thing. Within reason, of course: teachers have to have the latitude to do their jobs, and to be sure, there are parents who don't know what the heck they're talking about. In my view, parents, with their natural concern for their kids, should be encouraged to collaborate constructively with the school system. Schools should welcome this collaboration.

That said, there are still many questions. For example, how do we inspire the right kind of parental involvement, now that the two-career lifestyle is absorbing so much of the human time and energy that used to go into parental involvement in the local school?

Furthermore, the legal environment is affected by the fact that the Supreme Court last month left standing the appeals court decision in Mozert, the case from Tennessee in which parents unsuccessfully challenged the school's right to oblige their children to read materials that the parents deemed objectionable. The materials in question would be regarded as mainstream by most Americans; yet the parents' objections were religiously based and sincerely held, making the case extremely sensitive.

Anyway, the final resolution was in favor of the school. This result significantly increases the authority of those who choose the schools' curricula. The question I would like to raise -- without being able to answer it -- is this: How can this authority be used without provoking withdrawals from our public schools, and alienation of those families that remain in our

public schools? Is the answer the kind of constructive collaboration that leads to mutual respect, understanding, and accommodation?

To this point I have stressed the fact that the law recognizes that school officials, in order to properly do their jobs and provide students with an atmosphere for proper learning, must have reasonable latitude. They should not be burdened by excessive lawsuits or by unnecessary judicial impediments. The courts have permitted reasonable latitude by recognizing that a school is different from the workplace, or other government-supported institutions. But the emphasis is on the word "reasonable," for there is another side to this equation, namely, that school boards or school officials cannot be draconian in taking actions which in practical effect prevent students or segments of the student body from enjoying the proper arena for learning. If they do then we in the government may have the obligation to step in and prohibit school systems from engaging in such activity.

For example, many school districts continue to refuse to accept the fact that they are required to honor laws prohibiting discrimination. It is the role of the Department of Justice to insure that the laws are applied equally and that all students receive the benefit of a full education. Recently in Natchez, Mississippi, we filed a motion on behalf of the United States Department of Education for supplemental relief against the Natchez Special Municipal Separate School District. Our

complaint alleges that the school district has failed to properly implement student desegregation provisions, that it continues to maintain racially identifiable faculties, and that it treats its predominantly black schools with less care and provides inferior facilities to those at white schools in the same district. Such behavior, in our opinion, is unacceptable.

In Massachusetts, we were successful in proving that the Massachusetts Maritime Academy engaged in a pattern of discrimination against women. We proved that the academy outright discriminated against women by excluding them from admission, discouraging them from applying for admission, and by applying stricter admission standards. As a result of the government's suit, the academy was required to review applications, and to admit those females who were improperly denied admission.

Recently all of us have been watching closely the events at Gallaudet University in Washington, D.C. where student demonstrations led to the appointment of the nation's first deaf president. At the Department of Justice, it is our job to enforce the Rehabilitation Act which provides that handicapped students receive the same benefits from educators as those who do not suffer from being disabled.

In United States v. Board of Trustees of the University of Alabama, we filed suit against the board for discriminating against deaf students. Our complaint alleged that deaf students were denied free sign language interpreters by the university and

other mechanisms which are guaranteed by law to the handicapped such as providing adequate transportation.

What I am saying is there must be a fair balance here. The only role of the Department of Justice or any government agency or the courts should be to step in when that balance is grossly tipped to one side or another. We must work together to ensure that the balance is maintained and all our schools are administered fairly and equitably.

There are other problems, significant ones, that public schools face and that hamper your efforts to achieve excellence. One is the problem of drugs in schools, which I will look at more closely in my remarks tomorrow. Another is AIDS: what do you do when a pupil turns up infected with this disease?

To begin with, you try to preserve your own immunity to another dreaded illness, Acute FeaR of AIDS, or AFRAIDS. Second, you establish guidelines in advance, so that you don't have to make up the rules and procedures by the seat of your pants when the crisis arises. One set of guidelines is that of the Center for Disease Control, which recommends treating a pupil with AIDS like any other pupil until a state health authority certifies that the pupil presents a health threat. In any event, we must keep in mind the Supreme Court's ruling in the Arlene case, in which it held that tuberculosis is a handicap for purposes of the federal Rehabilitation Act. Since tuberculosis is an infectious disease, this decision has clear implications for how schools will have to handle pupils with AIDS.

Good luck to all of you next year. Thank you very much.

*U.S. GOVERNMENT PRINTING OFFICE:1988-202-046:82107