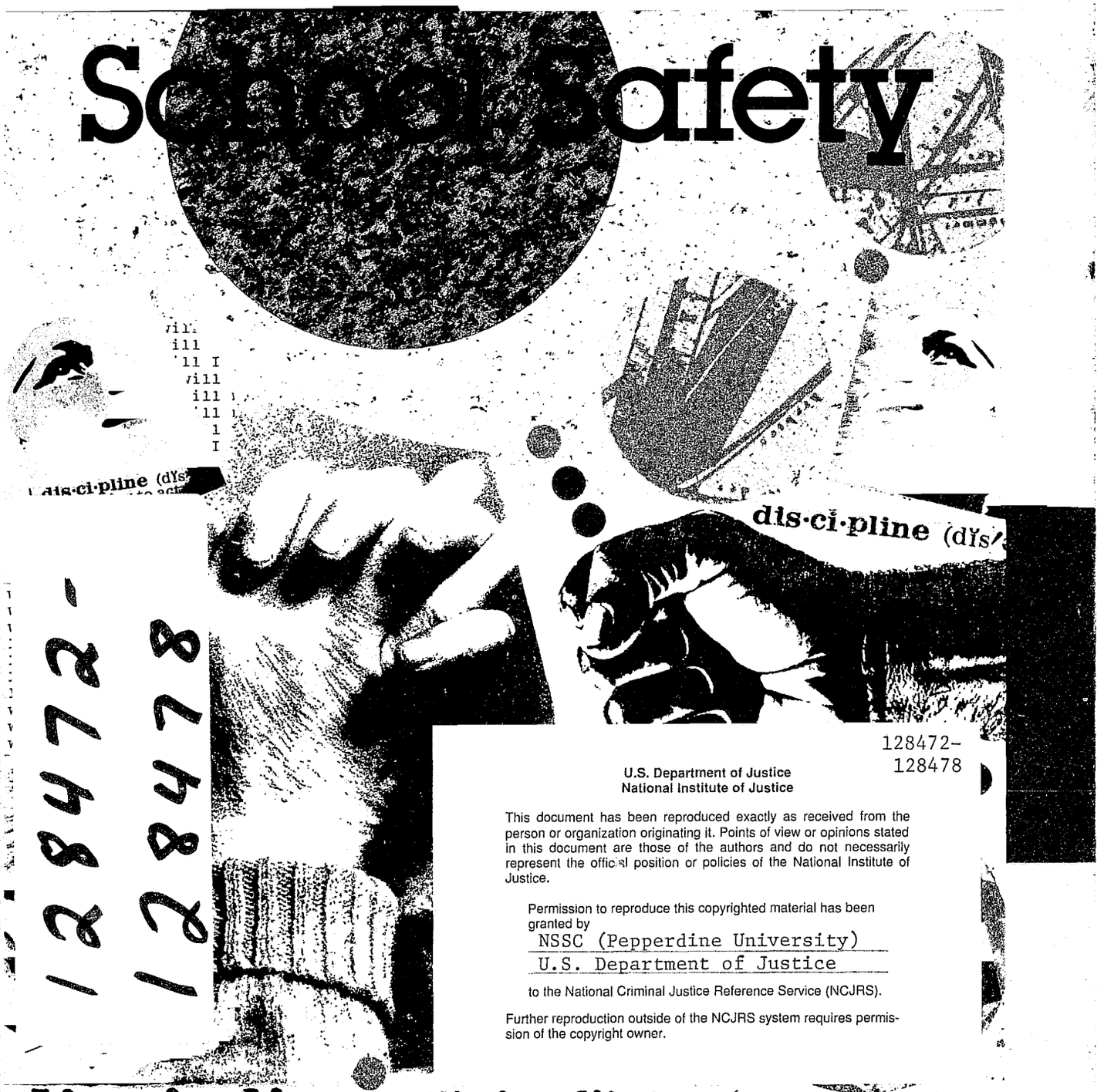
School Safety



dis·ci·pline (dĭs′ə plĭn), *n.*, *v.*, **-plin**
1. training to act in accordance with r
disci line. **2. instruction and exercise**

NATIONAL SCHOOL SAFETY CENTER

Pepperdine University's National School Safety Center is a partnership of the U.S. Department of Justice and U.S. Department of Education. NSSC's goal is to promote safe schools free of drug traffic and abuse, gangs, weapons, vandalism and bullying; to encourage good discipline, attendance and community support; and to help ensure a quality education for all children.

School Safety

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About the cover:
Discipline, or more accurately, the lack of, is identified as the root of many of our schools' problems. Only drugs in schools concern the public more. Illustration by Karen Watson.

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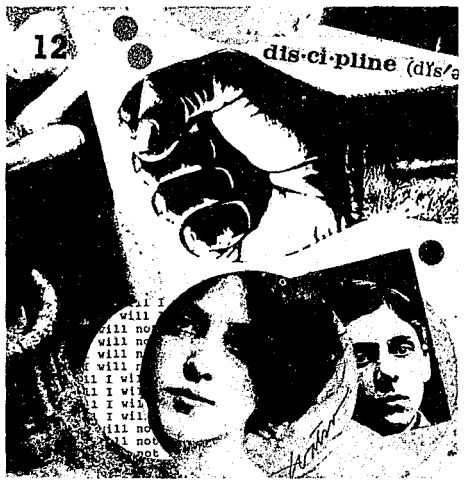

dis·ci·pline (dĭs/ə plĭ
1. training to act in ac

BY HENRY S. LUFLER JR.

Student discipline-related court cases decided both for and against plaintiffs need to be reviewed by school administrators on a regular basis.

Courting school discipline policies

Little research has directly addressed the link between court decisions and changing school discipline practices.[1] However, the preponderance of academic commentary, as distinct from research findings, suggests that school personnel enforce discipline rules less than they did in earlier times, in part because of the threat that someone will file suit.

It is important to note that recent research on courts and schools has addressed a larger question untouched in earlier studies — the cumulative impact of all education cases. A key issue today is the increased control of school operations by administrative rules and legal decisions generally, rather than the impact of single cases.

Contemporary education decisions

Early impact research employed relatively simple measures of compliance, such as whether defendants were read their rights or whether schools began the day with a prayer. Today, however, we are interested in studying the impact of more complex decisions, or the effect of groups of decisions within unsettled areas of the law. Contemporary cases involving religion in the public schools illustrate this point. Early research asked whether or not schools still had Bible readings or prayers. Today's cases involving religion in schools focus on such issues as holiday observances, after-school prayer groups, or invocations before ceremonies. Case law in these areas is still unsettled, with conflicting decisions as yet unaddressed by the Supreme Court. Lower court decisions in these cases, however, still have both a direct and indirect effect on school policies.

Assessment of compliance or the impact of decisions is made more complicated by such decisions as *Tinker v. Des Moines*,[2] *Wood v. Strickland*[3] or *Goss v. Lopez*.[4] Although *Tinker* applies to a constitutional right of free expression, the non-disruptive wearing of a protest armband, it is impossible to survey principals with regard to compliance. *Tinker,* after all, is more than a case about armbands; it establishes the principle that students do not "shed their constitutional rights at the schoolhouse door." There is a great distance, however, between saying that students have a limited right to free expression in school and determining what the boundaries of that right might be. It, therefore, is no surprise that one legal commentator (Flygare, 1986)[5] referred to *Tinker* as marking "the emergence of school law as a discipline." Legions of school lawyers and academic professionals have made careers out of advising schools on a reasonable interpretation of cases like *Tinker,* and in following and reporting on lower court decisions, as judges have wrestled with the same question.

Wood v. Strickland held that school officials may be liable for denying students their constitutional rights, but it does not and could not elaborate what those rights might be or what would constitute a "denial." The case was made even more difficult by the conclusion that school officials would be liable for damages for the denial of constitutional rights, even if they "should have known" those rights but did not. It is helpful to remember that the earlier studies on impact found that compliance was most likely if a court directive spoke clearly about intended behavior.

Goss v. Lopez found that students had property and reputational rights that must be protected in even a short suspension from school. Therefore, the Supreme Court required schools to conduct a brief "hearing" before a suspension. The court reasoned that students would be less likely to be suspended erroneously if principals gave the student a chance to learn why the suspension was occurring and to tell his or her side of the story. As will be detailed below, calling this brief exchange between the principal and student a "hearing" caused numerous educators to wonder how much due process might be extended to students in other school-student exchanges.

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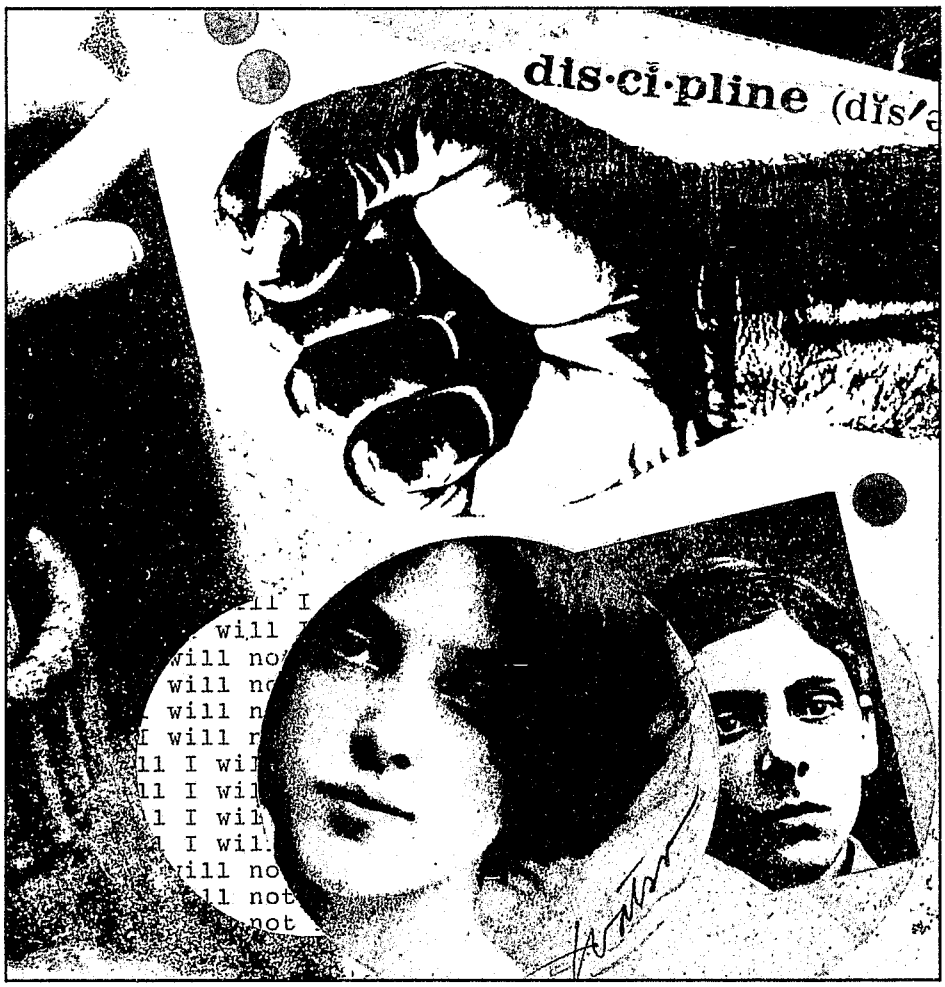

A number of important Supreme Court education decisions in the 1970s, then, created constitutional rights without offering clear signals as to how those rights might be defined or where the Supreme Court was leading. This opens up a question only touched on in contemporary research. "Legal uncertainty," and its impact on school operations, remains a fruitful topic. One study, for example, found that teachers felt they engaged in less discipline of students than they used to because they thought that courts had gone further in advancing student rights than was actually the case (Lufler, 1979). In case law areas where decisions conflict or the law is unsettled, the role of school law "experts" in offering interpretations became more important.

Commentators and local responses

Following *Tinker, Wood* and *Goss,* there was no shortage of predictions by commentators discussing where court decisions might lead or decrying the unhappy state of affairs that necessitated the speculation in the first place. This created what now should be seen as a new impact research question, the effect of legal commentators on the behavior of school personnel. Commentators not only wrote about a particular decision but, using crystal balls of varying clarity, also predicted future decisions based on the case they described.

The cases that commentators discussed were directed at school administrators, requiring, for example, that principals give students a pre-suspension hearing. In addition, it was found (Hollingsworth, Lufler and Clune, 1984) that commentaries had an impact on the way teachers behaved, even though teacher behavior was not the subject of the court decisions. This phenomenon created a new level of impact analysis, the study of the secondary or unintended consequences of court decisions. It is important to remember, then, that there is a difference between studies of *compliance* with education court decisions, generally focusing on administrators, and studies of the *impact* or *aftermath* of decisions, which is a much broader question.

The nature of some of the Supreme Court education decisions in the late 1960s and early to mid-1970s, then, led to two related phenomena. First, the role of legal commentators in exploring and interpreting complex decisions became more crucial. For better or worse, commentators began to suggest where the courts were headed, often offering disquieting predictions. Second, from a research perspective, it became more difficult to design judicial impact studies because what needed to be studied could not be addressed effectively by the simple compliance study methodology used in earlier research. "Impact" became a broader concept and one more difficult to limit for analysis.

Litigation explosion

At the same time that writers were discussing the increased number of court cases directed at public schools, there was a general discussion in the popular and academic press concerning the "litigation explosion" that was occurring in all areas of the law (Fleming, 1970). It was argued that many aspects of society were moving toward overregulation by the judiciary and that the use of the courts to resolve disputes threatened traditional modes of political and social discourse (Glazer, 1975). Both *Time,* in 1963, and *Newsweek,* in 1973, established "Law" feature sections, and the filing of cases involving such issues as educational malpractice and even "malparenting" was popularly reported.

While the discussion of unusual education cases proceeded in the popular press, school lawyers and administrators meeting in conventions also discussed such cases as challenges to National Honor Society selection practices, attempts by students to secure advanced places in the school band, and other litigation with unusual fact situations. Professional education groups began offering liability insurance to their members, further contributing to the feeling that lawsuits were an immediate threat to

educational professionals.

Regardless of whether attorneys actually file suit, school officials increasingly reported in the 1970s that they worried about litigation. Threats of lawsuit, often made by parents having little understanding of the probability of prevailing with such challenges, combined with uncertainty about the actual content of education decisions to make life more complicated for teachers and administrators.

School law knowledge

Research in the 1960s on the impact of courts found that the public did not have a particularly clear understanding of the areas in which the Supreme Court had rendered major decisions (Kessel, 1966). Perry Zirkel (1977, 1978), the leader of the education law survey movement in the 1970s, again found a low level of awareness with regard to the content of major education court cases. Of the 20 questions he asked concerning Supreme Court decisions, the average teacher respondent answered 10 correctly.

Other research (Hollingsworth, Lufler, and Clune, 1984) conducted in 1977 found that more than half of the teachers in six Wisconsin schools believed that students had more rights than courts actually had conveyed. For example, 53 percent of those surveyed believed that students had the right to legal counsel before being suspended. It is not surprising, therefore, that 45 percent of the teachers thought that "too much interference from courts" was an important cause of discipline problems.[6] The same study found that the students responsible for most of the schools' discipline problems — the 10 percent of the student body responsible for 90 percent of the rule infractions — also believed that the courts had gone further in protecting them than was actually the case.

A much more involved "Survey of Children's Legal Rights" was administered to university sophomores, seniors and practicing teachers (Sametz and McLoughlin, 1985). The authors found that "teachers and education students alike appear to have only a limited knowledge of children's legal rights." The respondents did better in some areas (exclusionary discipline, juvenile criminal rights and school attendance) and less well in others (child abuse, special education and corporal punishment). It is important to note that teachers did better in understanding the law in areas where they might be expected to have more personal responsibility and less well in areas where administrators or specialized education personnel, such as counselors, might be expected to take the lead. A failure to match case content with typical job responsibilities is a shortcoming in much of this survey research.

Research conducted in 15 Indiana high schools in 1981 found that 71 percent of the principals, but only 30 percent of the teachers and counselors, were able to list all the rights granted to students in short suspensions (Hillman, 1985). As might be expected, principals also were much more informed about expulsion cases, since they were more likely to have firsthand experience. About two-thirds of the teachers and administrators felt that procedural rules governing discipline imposed restraints on their actions (Teitelbaum, 1983).

These data suggest that fear of litigation may have been overstated as a source of changed teacher behavior, that "change" in discipline practices should be a research hypothesis, or that fear of litigation may be ebbing in the 1980s.

Improving disciplinary climates

School law materials need to be specialized. Doctors are not specialists in every major medical issue; likewise, we should not expect teachers to know or be interested in all areas of school law. Materials need to be tailored to meet the special issues that are common to particular positions, such as superintendents, principals, counselors or special education teachers.

At the same time, the assumption is too often made among teachers that knowledge of school law is "someone else's job." This assumption contains an element of truth, insofar as administrators have the major responsibility for handling difficult cases. But teachers cannot ignore the fact that a significant percentage of lawsuits involve staff members. This means that teachers should not be able to avoid learning basic principles of school law. Likewise, public school students would benefit from a similar discussion, perhaps in the context of a social studies class. To the extent that students have a greatly exaggerated sense of their legal rights, such instruction could reduce disorder.

Although there are a large number of education law texts, some written for teachers, very little study has been undertaken to determine those courses of instruction or approaches that are most effective. Neither do we know the extent to which disorder is reduced in a school where both students and teachers have been exposed to legal issues, although such projects were funded recently by the U.S. Office of Juvenile Justice and Delinquency Prevention.

Other steps a school can take to reduce disorder remain outside the purview of this article, but one final perspective on legal education is worthy of note. School personnel need to learn about the outcomes of controversial cases involving such issues as educational malpractice. The dismissed case never seems to receive the same attention as the big settlement or the preliminary outrageous demand. Popular publications should make a systematic effort to report the cases in which the plaintiff's request is held to have no merit. □

Endnotes

1. The author assumes the responsibility for any errors and omissions in this article. Helpful comments on an earlier draft were received from James A. Rapp, Ivan B. Gluckman, Oliver C. Moles, Robert A. Kohl, Amy L. Schwartz, Perry A. Zirkel, Michael W. Applie and Michael R. Olneck. Ann K. Wallace made helpful editorial suggestions, and Claire A. Shaffer supervised the manuscript preparation.

2. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); see also *Bethel v. Fraser*, 478 U.S. 675 (1986) regarding free speech at a student assembly.
3. 420 U.S. 308 (1975).
4. 419 U.S. 563 (1975).
5. For complete citations used in this article, see O.C. Moles, ed., *Student Discipline Strategies: Research and Practice* (Albany, N.Y: State University of New York Press, 1990).
6. For a discussion of attitudinal differences between counselors and administrators, see Schwab (1979).