The 1st Amendment in the Classroom Series, Number 4

ACADEMIC Freedom

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NEAL-SCHUMAN PUBLISHERS, INC.
NEW YORK LONDON

THE FIRST AMENDMENT IN THE CLASSROOM SERIES
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The Freedom to Read Books, Films and Plays. The First Amendment in the Classroom Series, No. 1. Foreword by Ken Donelson. ISBN 1-55570-001-2.

Freedom of Religion. The First Amendment in the Classroom Series, No. 2. ISBN 1-55570-002-0.

Freedom of Expression. The First Amendment in the Classroom Series, No. 3. ISBN 1-55570-003-9.

Academic Freedom. The First Amendment in the Classroom Series, No. 4. ISBN 1-55570-004-7.

The Freedom to Publish. The First Amendment in the Classroom Series, No. 5. ISBN 1-55570-005-5.

Published by Neal-Schuman Publishers, Inc.
23 Leonard Street
New York, NY 10013

Printed and bound in the United States of America.

Library of Congress Cataloging-in-Publication Data

Academic freedom.

(The 1st Amendment in the classroom series; no. 4)
Includes index.
1. Teachers—Legal status, laws, etc.—United States —Cases. 2. Freedom of speech—United States—Cases. 3. Academic freedom—United States—Cases. I. Bosmajian, Haig A. II. Series.
KF4175.A52A26 1988 344.73'078 88-31265
ISBN 1-55570-004-7 347.30478

Preface

THE *First Amendment in the Classroom Series* responds to the need for teachers, students, parents, and school board members to become more aware of how First Amendment rights apply to the classrooms of a free society. Those cherished rights, if they have any meaning, are directly relevant and essential to our schools. What is especially needed is a wider familiarity with and understanding of the arguments and reasoning used to reach judgments regarding First Amendment issues, so often controversial and divisive, affecting what goes on in the classroom. To be unfamiliar with those arguments is to be unprepared to defend the First Amendment rights of students and teachers. Those arguments will be found in this series devoted to (1) the banning of books, plays, and films; (2) religion and prayer in the classroom; (3) symbolic speech; (4) teaching methods and teachers' classroom behavior; and (5) school publications and underground newspapers. My earlier volume, *Censorship, Libraries, and the Law,* covers cases of school library censorship.

When United States District Judge Hugh Bownes declared unconstitutional a Portsmouth, New Hampshire, Board of Education rule forbidding "distribution of non-school sponsored written materials within the Portsmouth schools and on school grounds for a distance of 200 feet from school entrances," he declared in the order of the court that "this opinion and Order is to be posted on the school bulletin board in a prominent place, and copies of this opinion and Order are to be made available to the students in the school library."[1]

This was a reminder to students, teachers, and school board members—but especially to the students—that First Amendment rights applied to them. As the United States Supreme Court had put it exactly thirty years earlier in *Barnette,* the First Amendment rights need to be practiced in our schools "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."[2]

While the actual decisions in the cases involving the First Amendment rights of students and teachers in the classroom are crucial, the arguments and reasoning in the opinions are equally important. *Why* did the court decide that students could not be prohibited from distributing their literature? *Why* did the court decide that students could not be compelled to salute the flag? *Why* could the teacher not be dismissed for using books containing "offensive" language? *Why* could not the school board dismiss the teacher for using "unorthodox" teaching methods? *Why* could not parents have sex education banned from the school? *Why* did the court decide that prayer in the classroom was unconstitutional? Understanding the "whys" leads to an understanding of the workings of a democratic society.

In 1937, when throughout the world democratic institutions were being threatened and some were being destroyed, John Dewey observed that wherever political democracy has fallen, "it was too exclusively political in nature. It had not become part of the bone and blood of the people in daily conduct of life. Democratic forms were limited to Parliament, elections, and combats between parties. What is happening proves conclusively, I think, that unless democratic habits of thought and action are part of the fibre of a people, political democracy is insecure. It cannot stand in isolation. It must be buttressed by the presence of democratic methods in all social relationships."[3]

When the students, teachers, school boards, and parents involved in these cases insisted on exercising their First Amendment freedoms, they learned that the principles of our democracy are not "mere platitudes." For the students especially, the cases helped demonstrate that the Bill of Rights and "democratic habits of thought and action are part of the fibre of a people." These cases show political democracy "buttressed by the presence of democratic methods" in one realm of our society—the classroom.

It has been clearly established at several levels of our judicial system that protecting the First Amendment freedoms of teachers and students is crucial in a free society. In *Barnette,* the United States Supreme Court declared: "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."

In giving First Amendment protection to junior and senior high school students who had worn black armbands to school to protest U.S. involvement in the Vietnam War, the United States Supreme Court spoke most clearly in *Tinker* on the issue of the First Amendment rights of teachers and students. Justice Abe Fortas, delivering the opinion of the Court, said in 1969: "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."[4]

When in 1978 United States District Court Judge Joseph Tauro ordered school authorities to return to the high school library a book which had been removed because it contained a "dirty, filthy" poem, he reiterated in his own words what had been declared in *Tinker:* " . . . the First Amendment is not merely a mantle which students and faculty doff when they take their places in the classroom."[5]

On these pages are the stories of students and teachers who risked much to fight for their First Amendment rights in the classroom, who did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" and did not see the First Amendment as "merely a mantle which students and teachers doff when they take their places in the classroom." What is encouraging is that in almost all the cases appearing in this series, students and teachers have been given First Amendment protection by the courts.

The reasons given in the opinions on these pages are applicable to many of those First Amendment controversies which may never reach the courts. Edward Jenkinson, who has done much research and writing on censorship in the schools and who chaired the National Council of Teachers of English Committee Against Censorship has reported: "During the early seventies, approximately one hundred censorship incidents were reported to the ALA [American Library Association]'s Office for Intellectual Freedom each year. By 1976, the number had risen to slightly less than two hundred and climbed to nearly three hundred in 1977." Shortly after the 1980 Presidential election, Judith Krug of the American Library Association estimation a threefold increase in reported censorship incidents, "which would mean roughly nine hundred reported incidents a year." But as Jenkinson points out, the reported incidents "are only a small part of the censorship attempts each year. . . . After talking with teachers, librarians and administrators in meetings in 33 states, I believe that for every reported incident of censorship at least fifty go unreported."[6]

The First Amendment in the Classroom makes available the many substantial

arguments that can be used by students, teachers, and parents involved in First Amendment controversies surrounding teachers and students in the classroom. The reasons given by the judges on these pages are there for students, teachers, and parents to use in their efforts to persuade school boards and others that the First Amendment applies to the school environment and that 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."

In his discussion of the nature and function of the judicial court opinion, legal scholar Piero Calamandrei has observed that "the most important and most typical indication of the rationality of the judicial function is the reasoned opinion." Of the need for the judge to present the reasoned opinion, Calamandrei says that

> "ever since justice descended from heaven to earth and the idea gained ground that the judge is a human being and not a supernatural and infallible oracle to be adored, whose authority is beyond question, man has felt the need of a rational explanation to give validity to the word of the judge." [The major function of the reasoned opinion, explains Calamandrei,] "is an explanatory or, one might say, a pedagogical one. No longer content merely to command, to proclaim a *sic volo, sic iubeo* [So I wish, so I command] from his high bench, the judge descends to the level of the parties, and although still commanding, seeks to impress them with the reasonableness of the command. The reasoned opinion is above all the justification of the decision and as such it attempts to be as persuasive as it can."[7]

Like the judge, neither supernatural nor infallible, we are asked for rational explanations to justify our decisions. The judicial opinions on these pages provide useful and persuasive reasons.

I hope that readers of the books in this series—students, teachers, school board members, parents, and others—will develop their appreciation for and commitment to the First Amendment rights of students and teachers in the classroom and will recognize the variety of arguments available to counter those who would not have the First Amendment apply to teachers and students. The First Amendment freedoms were put into the Bill of Rights to be used; the court opinions in this series demonstrate that teachers and students usually get First Amendment protection from the courts. We must recognize, however, that freedoms not exercised by the citizenry lose their vitality. Teachers and students, said Chief Justice Earl Warren, "must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."[8]

NOTES

1. *Vail* v. *Bd. of Ed. of Portsmouth School Dist.*, 354 F. Supp. 592 (1973).
2. *West Virginia State Bd. of Ed.* v. *Barnette*, 319 U.S. 624 (1943).
3. John Dewey, "Democracy and Educational Administration," *School and Society*, 45(April 3, 1937), p. 462.
4. *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969).
5. *Right to Read Defense Committee* v. *School Committee, Etc.*, 454 F. Supp. 703 (1978).
6. Edward Jenkinson, "Protecting Holden Caulfield and His Friends from the Censors," *English Journal*, 74(January 1985), p. 74.
7. Piero Calamandrei, *Procedure and Democracy*, trans. John C. Adams and Helen Adams (New York: New York University Press, 1956), p. 53.
8. *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957).

Constitutional Amendments

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Judicial Circuits

Circuits	*Composition*
District of Columbia	District of Columbia
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island
Second	Connecticut, New York, Vermont
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia
Fifth	Louisiana, Mississippi, Texas
Sixth	Kentucky, Michigan, Ohio, Tennessee
Seventh	Illinois, Indiana, Wisconsin
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii, Northern Marianna Islands
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
Eleventh	Alabama, Georgia, Florida

Foreword

by Donald Aguillard

EVERY science teacher vividly recalls his or her initiation to the classroom. After the completion of student teaching, an interview with the principal, several days of meetings with other teachers, and encouragement from peers, the neophyte begins the planning of the first lesson by examining the textbooks provided by the school system. It was at this point, as a beginning teacher, that I first perceived a major flaw in science education.

In most science classes the textbook is the curriculum, yet the text often fails to take into account the explosion of scientific knowledge and understanding over the past 20 years. As we hear today about super conductivity, fiber optics, genetic engineering, quarks, and super plastics, we can safely conclude that science has not finished changing our world. In fact, scientists state that we will see more technical innovations and high-tech products in the next 15 years than we did in the preceding 30 years. Yet the textbooks stacked in my first classroom were uninspiring, unimaginative, and profoundly boring to students.

How could the quality of our science textbooks have deteriorated while the body of scientific knowledge expanded like the mushroom cloud of a nuclear explosion? One answer is that many states have established excessively detailed textbook specifications. Adoption committees often overzealously attempt to find a textbook that matches an established curriculum. Publishers sacrifice depth and understanding to concentrate on coverage, however inadequate it may be, so that committees will select their textbooks.[1]

Can we change the current state of affairs in science education?

Presented with an inadequate textbook, I chose to broaden the curriculum of my classroom. I read widely from scientific journals and a variety of current science texts. I emulated the practices of a master teacher I had observed who never failed to have a story to share with his students. In his classes biology came to life through the experiences and bits of information he wove into his daily lessons. In time, I also began to rely less on the textbook as my primary teaching tool. I obtained my class notes from multiple sources, including college introductory biology texts, and I began the practice of enriching my lectures with information derived from my readings of current materials.

Based on my experiences in the science classroom, I have concluded that the major cause of our textbook problem today is the failure to entrust the classroom teacher with curriculum decisions. Teachers have not been asked to assume an active role in adopting new textbooks or revising the curriculum. The pressures of special-interest groups causes policymakers to alter the curriculum and publishers to sacrifice essential material to avoid criticism or loss of sales. Many teachers, unfortunately, view the textbook not as another source for student reading but as a guide to determine what should, or should not, be discussed in class.

And so, the more stringently we regulate the content of textbooks, the less useful they become for our students.

These practices have undoubtedly had a profound impact on our students. The National Science Teachers Association (NSTA) has documented a significant decline in the number of undergraduates entering science education. Additionally, a survey conducted by Aldridge and Johnston in 1984 estimated that 30 percent of the secondary teachers are either unqualified or severly underqualified to teach science.[2] Given these findings, it is imperative that we resist any attempt to further impair science instruction in this country.

Because of the threat it posed to science education, I chose to challenge a 1981 Louisiana statute which required teachers to give equal time to creation science and evolution science in the classroom. A similar statute had already failed in California and Arkansas. The Louisiana law and similar legislation pending in other states would have caused science textbook publishers to insert creation science into their textbooks in response to market pressures. Realizing the detrimental effects of this law on Louisiana students and on science teaching in general, I conferred with my principal and superintendent to determine my vulnerability in filing suit against the State of Louisiana. Both administrators gave me assurances and support and expressed the view that the constitutionality of the recently enacted legislation should be tested.

My colleagues' reaction further motivated me to become actively involved. Many biology teachers were prepared to forego teaching evolution rather than give equal time to religious ideas mislabeled as science. These capable science instructors, by their conviction that it would be preferable to strip evolution from the curriculum rather than teach creation science, were clearly signalling that creation science has no place in the public school science classroom.

I was heartened by the number of scientific organizations and individuals who also viewed creation science as a threat to science education. The National Academy of Sciences published *Science and Creationism* in 1984 in an attempt to examine the major issues of this debate openly and candidly. The Academy concluded that incorporating religious beliefs into our current science curriculum jeopardized the quality of public science education.

In addition, 72 Nobel laureates in science urged the U.S. Supreme Court to declare unconstitutional the Louisiana creation-science statute. Seventeen academies of science and seven scientific organizations also petitioned the court to reject the arguments for creation science.

Popular reaction to the court challenge was often critical. Each time the local newspaper or television station publicized the case, letters and calls, mostly anonymous, indicated that supporters of creation science viewed my position as a threat to their religious beliefs. The creation science lobby had successfully packaged a religious fundamentalist belief as science, shielding the truth from our elected legislators.

The State Attorney General was unrelenting in his defense of the Louisiana statute. Each time a court declared the Louisiana Balanced Treatment Act unconstitutional, he filed an appeal. The U.S. Supreme Court ultimately heard oral arguments for *Edwards* v. *Aguillard* in December 1986.

Following the court's decision on creation science, I addressed a group of science teachers at the NSTA convention in St. Louis, Missouri. I was not surprised to hear from those in attendance that creation science is far from dead in this country. Many teachers could recount at least one confrontation with a school board member, religious leader, or concerned parent who demanded inclusion of creation science in the curriculum. Rather than attempting to gain statewide support, advocates of creation science now approach local boards and individual classroom teachers. Since the threat to science education will continue, educators must encourage publishers to resist the pressures of special-interest groups.

The Louisiana Creationism Act was ruled unconstitutional by the Supreme

Court because the statute violated the Establishment Clause, which forbids a state to intend to or to achieve approval or disapproval of a particular religious belief, or excessively to entangle government and religion. Supreme Court Justice William J. Brennan, writing for the majority, said that the "purpose of the Creationism Act was to restructure the science curriculum to conform with a particular religious viewpoint."[3]

Whether beginning or experienced, the science teacher can contribute to the field not only through inspired teaching but also through insistence on sound educational practices. In designing curricula, selecting materials, and determining teaching methods, school system officials must not disregard the judgments of the classroom teachers. The cases collected in this volume demonstrate that the courts tend to support teacher's efforts—even when unorthodox—to create an environment of academic inquiry. That should encourage educators to hold firm their principles, assuring that vocal minorities do not overpower less vocal majorities in maintaining the integrity of education.

NOTES

1. Tyson-Bernstein, Harriet. "America's Textbook Fiasco," *American Educator*. Summer 1988. pp. 20–27 and 39.
2. Aldridge, B.G. and Johnston, K.L. "The Crisis in Science Education—What Is It?—How Can We Respond?" *Journal of College Science Teaching*. September/October. 1984. pp. 20–28.
3. *Edwards* v. *Aguillard* 107 S. Ct. 2573, 2582 (1987).

Contents

Introduction

A MICHIGAN junior high school Biology teacher is suspended for allegedly "behaving improperly and teaching 'sex education' in an extremely insensitive manner." An Ohio high school Spanish teacher is reprimanded by the principal because of her use of classroom time to denounce the local police department. An Illinois kindergarten teacher is discharged for refusing "to teach any subjects having to do with love of country, the flag or other patriotic matters in the prescribed curriculum." A Missouri high school Math teacher is dismissed for denouncing in his Algebra class the military personnel recruiting on the campus and for suggesting to his students they take action against the recruiters. A North Carolina student teacher is discharged "because he gave unorthodox answers to student questions (derived from the day's text) about creation, evolution, immortality, and the nature and existence of God." A Texas high school Civics teacher is dismissed after parents' complaints concerning his "truthful response to a student's classroom question that he was not opposed to interracial marriages" and after he had been instructed to teach his current events course "within the text and not discuss controversial issues" in his civics class.

The teachers' classroom behavior, speech and teaching methods have raised constitutional questions which the courts have had to answer. While the courts have been willing to give First Amendment protection to teachers who use "controversial" books, films and plays (see Volume One of this Series), they have not been so consistently ready to give as much protection to teachers whose classroom speech and behavior might be irrelevant to the subject-matter of the class. As the cases in this volume demonstrate, there are some types of classroom behavior and teaching methods the courts have argued do not warrant constitutional protection. There are, however, cases in which the courts have given protection to the teachers who have used "unorthodox" teaching methods or expressed in class views which parents and school officials found "offensive."

The judges have generally been careful to point out that in a free society teachers must not be forced into teaching only orthodox ideas through orthodox teaching methods. As a United States District Court in North Carolina stated in *Moore*: "Although academic freedom is not one of the enumerated rights of the First Amendment, the Supreme Court has on numerous occasions emphasized that the right to teach, to inquire, to evaluate and to study is fundamental to a democratic society. . . . [T]he safeguards of the First Amendment will quickly be brought into play to protect the right of academic freedom because any unwarranted invasion of this right will tend to have a chilling effect on the exercise of the right by other teachers."

In 1964, the United States Supreme Court declared unconstitutional in *Baggett* v. *Bullitt* a Washington State loyalty oath which required that teachers "by precept and example will promote respect for the flag and the institutions of the United States of America and the State of Washington, reverence for law and order and undivided allegiance to the government of the United States." The Court found some parts of the oath too vague with terms of uncertain meaning; teachers, said the Court, might avoid presenting controversial lectures and materials since it was not clear what precisely was prohibited by the statute.

When a United States District Court in Texas gave constitutional protection in *Sterzing* to a high school Civics teacher who had been dismissed for, among other

things, remarks he made and teaching methods he used in class when dealing with issues related to race, prejudice and protest, the court while noting that "a teacher's methods are not without limits," went on to say: "[A] teacher must not be manacled with rigid regulations, which preclude full adaptation of the course to the times in which we live. It would be ill-advised to presume that a teacher would be limited, in essence to a single textbook in teaching a course today in civics and social studies." "The freedom of speech of a teacher and a citizen of the United States," said the court, "must not be so lightly regarded that he stands in jeopardy of dismissal for raising controversial issues in an eager but disciplined classroom."

In deciding to give constitutional protection to a teacher's controversial expression outside the classroom, the United States Supreme Court in *Pickering* took into account the possible effects of such speech on what went on in the teacher's classroom. In deciding for Pickering, a high school teacher who had been dismissed for sending to a local newspaper a letter critical of the District Superintendent and the school board, the Supreme Court noted that "this case does not present a situation in which a teacher's public statements are so without foundation as to call into question his fitness to perform his duties in the classroom. In such a case, of course, the statements would merely be evidence of the teacher's general competence, or lack thereof, and not an independent basis for dismissal." Justice Marshall, delivering the opinion of the Court, referred to the fact that Pickering's public criticism had not interfered with his classroom teaching:

> What we do have before us is a case in which a teacher has made erroneous public statements upon issues then currently the subject of public attention, which are critical of his ultimate employer but which are neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally. In these circumstances we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

Pickering became a landmark case and Justice Marshall's arguments subsequently were used by various lower courts in deciding cases involving the First Amendment rights of teachers.

In giving constitutional protection to a Texas high school teacher, a United States District Court in Texas declared in *Lusk* that "*Pickering* made it clear that a teacher's employment may not be conditioned upon the surrender of his constitutional rights. A citizen's right to engage in protected expression is substantially unaffected by the fact that he is also a teacher and, as a general rule, he cannot be deprived of his teaching position merely because he exercises these rights." School authorities, said the court, "must nurture and protect, not extinguish and inhibit, the teacher's right to express his ideas. Only if the exercise of these rights by the teacher materially and substantially impedes the teacher's proper performance of his daily duties in the classroom or disrupts the regular operation of the school will a restriction of his rights be tolerated."

In 1979, the United States Court of Appeals, Seventh Circuit, decided for an Illinois elementary school teacher who had been transferred because "she had complained about school procedures on a number of occasions, and that she was 'stirring up trouble' in the teachers' lounge." In so deciding, the court referred to *Pickering* which it said "can be read as establishing that two limits on a teacher's right to speak out may be permissible. First, speech that is so disruptive as to impede the teacher's performance or to interfere with the operation of the school may be proper grounds for discipline. Second, if the speech does not involve matters of public interest it may not be entitled to constitutional protection." In this case,

said the court, the school officials had "not shown that plaintiff's statements impeded her classroom duties or interfered with the regular operation of the schools generally." Since the teacher had "established that her speech was not unduly disruptive, *Pickering* does not support the school board's position."

The humorous anti-superintendent remarks expressed by another teacher in the classroom, however, did not receive constitutional protection from a California court. Among other things, the teacher had "advised his philosophy class that the district superintendent could be a good superintendent 'but he spends too much time * * * (at this point in the statement he [the teacher] stepped over to the wall and simulated licking the wall with his tongue in an up and down manner and then continued speaking) * * * licking up the board.' " While the court agreed in *Hensey* that a teacher has a right to differ with and to criticize the superintendent, the means of expression is crucial in deciding whether the speech warranted First Amendment protection. The court went on to say that "while humor is an important part of a stimulating and entertaining presentation, a co-educational classroom does not appear to be the place for the barracks type of language used by this defendant."

Another teacher who did not get First Amendment protection had been dismissed for using the classroom "as a forum for expression of disagreement with her administrators on internal affairs." As with the California court, the United States District Court in Nebraska said in *Ahern* that a teacher has a right to express opinions and concerns, as does any other citizen, on matters of public concern, but the District Court "doubted" that she "has a right to express them *during class* in deliberate violation of a superior's admonition not to do so, when the subject of her opinions and concerns is directly related to student and teacher discipline." The court argued that while the teacher could express disagreement with views of the school administration, "a teacher is not constitutionally entitled to use the classroom as a forum for expression of disagreement with her administrators on internal affairs."

The same year (1971) the District Court decided against the teacher in *Ahern*, a United States District Court in Arkansas decided in *Downs* for a teacher who had been dismissed because she had her students "criticize" through cartoons, shown to the principal, an unsafe incinerator on school grounds and a broken-down water fountain. In deciding for Mildred Downs who had taught in the Arkansas Public School System for twenty five years, the District Court in Arkansas declared: "A citizen, be he teacher or layman, has the legal right to seek redress be it judicial or administrative for substantial dangers and/or threats to his health and/or safety and a court cannot sanction attempts to so intimidate a citizen, that they forego such fundamental rights. . . . .When a School Board acts, as it did here, to punish a teacher who seeks to protect the health and safety of herself and her pupils, the resulting intimidation can only cause a severe chilling, if not freezing, effect on the free discussion of more controversial subjects."

While the United States District Courts have given First Amendment protection to teachers' in-class "controversial" comments, as in *Moore* and *Sterzing*, the United States Court of Appeals, Eighth Circuit, decided in 1974 in *Birdwell* against a teacher who upon hearing that Army personnel would be speaking to the students said, among other things to the students in his Algebra class, that the pupils were "4,000 strong" and could get the military off the high school campus. The court argued that the dismissal of the probationary teacher was warranted inasmuch as he used his Algebra class to encourage young and immature minds to "employ measures of violence as a demonstrative device." The Court of Appeals rejected Birdwell's argument and his reliance on *Tinker*, Birdwell arguing that "there was no material or substantial disruption of the school." The court responded: "In a situation of potential disruption there is no requirement in the law that the proper authorities must wait for the blow to fall before taking remedial

measures. Moreover, even should violence not have occurred, we do not take it that such is a *sine qua non* of disruptive conduct. The trial court found that the appellant's actions, both in the classroom and in the hallway, were 'disruptions of the orderly and disciplined operation of the school in and of themselves.' It is clear upon this record that appellant's termination did not result from the exercise of a constitutionally protected right of free speech."

In 1979, a Michigan jury awarded a high school Biology teacher $275,000 in compensatory damages and $46,000 in punitive damages after school officials removed him from the classroom when a few parents alleged that he was "behaving improperly in the classroom and teaching 'sex education' in an extremely insensitive manner. These allegations were made public at a school board meeting held on April 23, 1979." Stachura, the teacher, argued that his First Amendment freedoms had been infringed. The jury was instructed that Stachura's academic freedom "is limited by the right of the school board to inculcate community values through control of the substantive content of the curriculum. However, the jury was also instructed that an instructor's teaching methods are entitled to first amendment protection as long as the substantive values the school board seeks to inculcate are not subverted by those methods." As Judge Harvey indicated in his 1983 *Stachura* opinion, "Evidence was presented that the biology text used by Stachura was approved by the board of education, as was the film used to supplement the text discussion of reproduction. Stachura testified concerning the instruction techniques he used in teaching reproduction. This testimony was at odds with the allegations of the parents and the claims of the defendants. Moreover, plaintiff was suspended only after a vehement protest by certain parents; evidence which certainly raises the inference that Stachura was suspended in retaliation for his allegedly improper teaching methods. This evidence would permit a reasonable jury to find for plaintiff Stachura."

Judge Harvey also contended that the circumstances of the case gave rise to a due process right. Stachura, said the judge, "was removed from the classroom under circumstances which invited stigmatization. Given the humiliating nature of the publicity surrounding the removal, Stachura had a right to a forum which would permit an opportunity for swift public vindication. Plaintiff's liberty interest claim was properly submitted to the jury."

In affirming the District Court's judgment, the United States Court of Appeals, Sixth Circuit, declared in 1985: "Turning directly to the appellate issues in Stachura's suit against the School District defendants, we hold, as indicated above, that plaintiff Stachura's First Amendment rights were infringed and that his exercise of 'academic freedom' had followed rather than violated his superior's instructions." The Court of Appeals agreed with the District Court and the jury that "Stachura's property interests were invaded by his being effectively discharged" and that "the actions of the School Board 'imposed a stigma on Stachura and foreclosed a definite range of employment opportunities' which plaintiff would otherwise have available." Further, said the court, the facts "also indicate clearly that Stachura was never given a fair opportunity to present his defense to the School Board nor do we believe that the Board's action can be held as a matter of law to have been taken in good faith."

Among the cases in this volume are decisions concerned with a teacher who, for religious reasons, refused to teach subjects dealing with patriotism, love of country, patriotic holidays and songs; an elementary school teacher who had his students write letters to his fiancee to practice their penmanship, the students later receiving from the fiancee letters affirming her being a communist along with her husband [the teacher] and their son Chris who she said was learning to be a communist; a history teacher who used "role playing" as a teaching method during a unit on the post-Civil War Reconstruction period.

What the court opinions in this volume appear to be saying, among other things, is that teachers whose classroom teaching methods and comments are ap-

propriate for the age-level of the students and relevant to the subject-matter being taught will get constitutional protection, even if the comments and teaching methods are "unorthodox." While "a teacher's methods are not without limits," a teacher "must not be manacled with rigid regulations, which preclude full adaptation of the course to the times in which we live." A teacher's teaching methods "are entitled to first amendment protection as long as the substantive values the school board seeks to inculcate are not subverted by those methods." Due process must be observed and teachers who have been reprimanded or suspended must be given a "fair opportunity to present" their defenses to the School Board and the Boards must "act in good faith." If the teachers did not have the right to be warned before they were discharged, they "might be more timid than it is in the public interest" that they should be and they "might steer away from reasonable methods with which it is in the public interest to experiment." On the other hand, teachers who use the classroom, the captive audience of students, to proselytize religious and political views and to criticize school officials are not likely to receive constitutional protection.

The court opinions in this volume reflect, for the most part, what has been declared by various professional organizations such as the National Council for the Social Studies, the American Association of University Professors and many others. In its "Statement on Academic Freedom and Tenure" the AAUP, along with scores of other organizations such as the Modern Language Association, Speech Communication Association, American Library Association, and American Association of Schools and Departments of Journalism which endorsed the AAUP Statement, declared in part that "the teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject." The intent of this part of the Statement "is not to discourage what is 'controversial.' Controversy is at the heart of the free academic inquiry which the entire Statement is designed to foster. The passage serves to underscore the need for the teacher to avoid persistently intruding material which has no relation to his subject."

The National Council for Social Studies declared in the Preface to its "Statement on Academic Freedom and the Social Studies Teacher": "Democracy is a way of life that prizes alternatives. Alternatives mean that people must make choices. Wisdom with which to make choices can come only if there are freedom of speech, of press, assembly, and of teaching. They protect the people in their right to hear, to read, to discuss, and reach judgments according to individual conscience. Without the possession and the exercise of these rights, self-government is impossible."

As to the selection of educational materials used in the schools, the Statement on Academic Freedom and the Social Studies Teacher stated: "The availability of adequate and diversified materials is essential to academic freedom. Selection, exclusion, or alteration of materials may infringe upon academic freedom. Official lists of supplementary 'materials approved' for classroom use, school library purchases, or school book shops may also restrict academic freedom. Actively involving teachers in selection procedures based on written criteria to which all interested persons have access is an essential safeguard."

When in 1972 a United States District Court in Texas decided for high school Civics teacher Henry K. Sterzing who had been dismissed because of his "controversial" teaching methods and comments in class, Judge Carl Bue, Jr. persuasively argued: "A responsible teacher must have freedom to use the tools of his profession as he sees fit. If the teacher cannot be trusted to use them fairly, then the teacher should never have been engaged in the first place. The Court finds Mr. Sterzing's objectives in his teaching to be proper to stimulate critical thinking, to create an awareness of our present political and social community and to enliven the educational process. These are desirable goals. . . . This discharge of Mr. Sterzing and failure to rehire him, for the reasons stated by the school board, con-