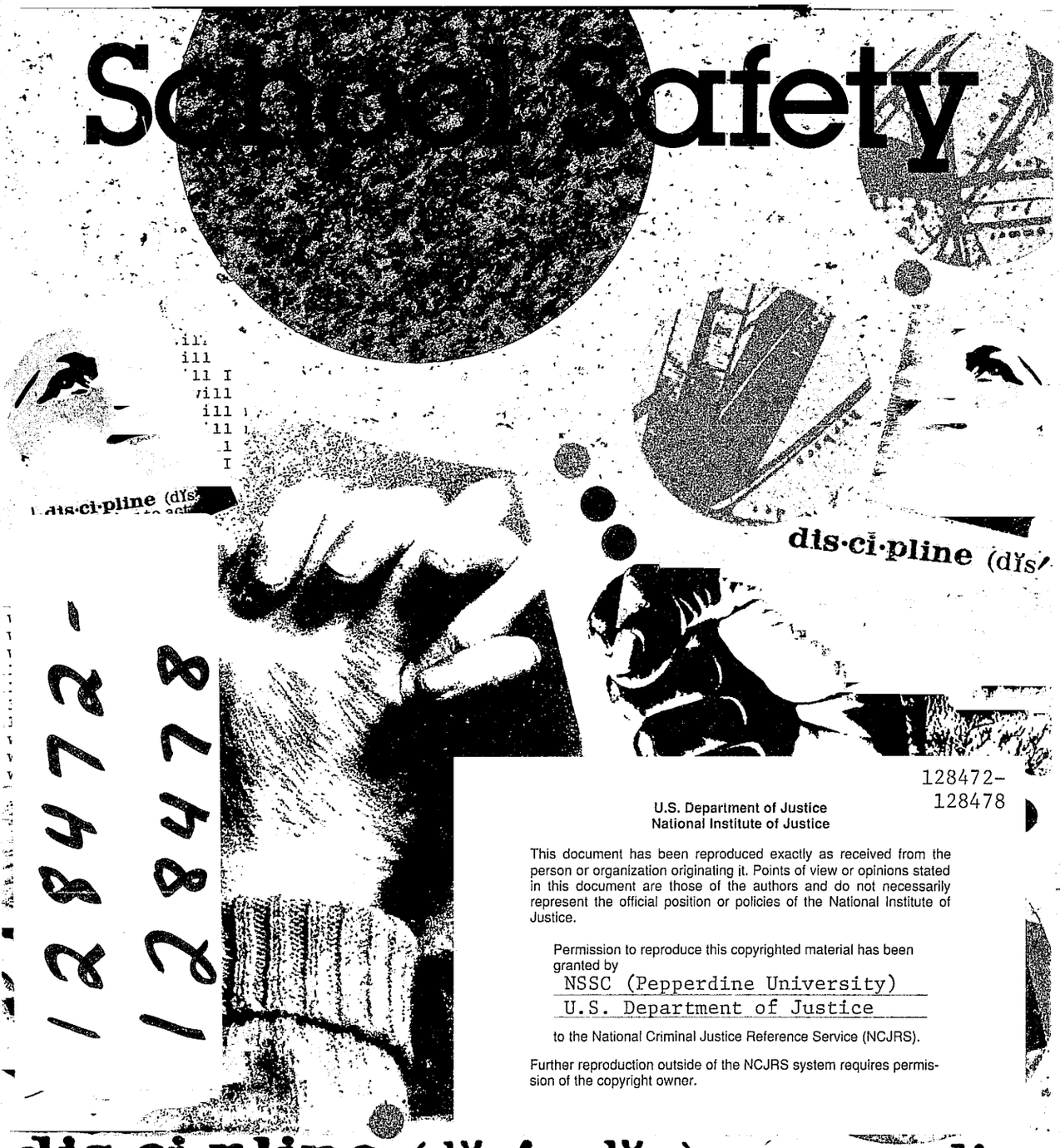
School Safety



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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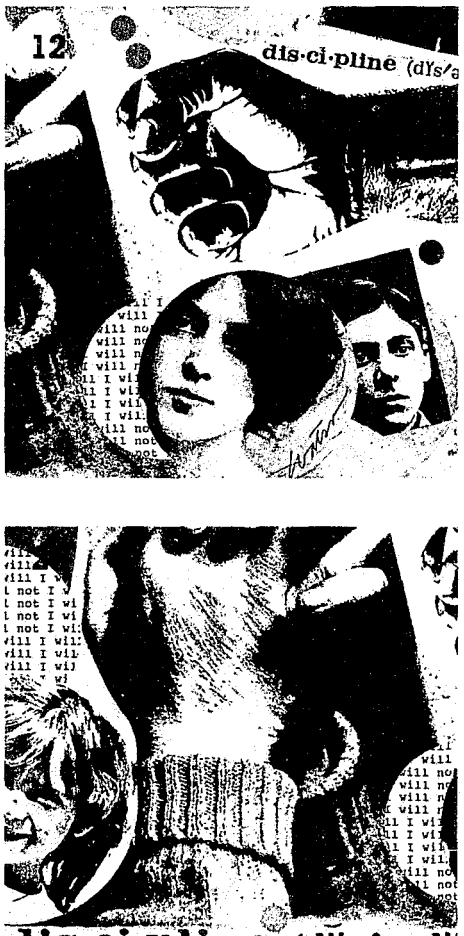

BY BERNARD JAMES

Citizenship of students, the courts have found in recent decisions, is as important to the education process as academic concerns.

Student misbehavior and the law

Ordinarily, the legal explanation of the authority school officials have over student conduct in school starts with the case of *Tinker v. Des Moines Independent School District,* 393 U.S. 503 (1969). *Tinker* recognizes the interest that schools have in preserving the campus environment against disruptions to the learning process.

The "disruption theory" of *Tinker* is well-established in education law case discussions and school policy manuals. Relatively unnoticed is the recent increase of court decisions that approve of the expansion of ordinary disciplinary codes to reach activities not ordinarily associated with *Tinker* concerns. This new scenario is causing surprise to educators and parents alike. Can the school invoke disciplinary rules to teach manners and civility?

In *Bethel School District v. Fraser,* 478 U.S. 675 (1986), the U.S. Supreme Court upheld the disciplinary action of school officials toward a student who was accused of giving a lewd speech at a school assembly. In part, the student urged the students to vote for him because he was a "man who is firm — he's firm in his pants, he's firm in his shirt, his character is firm...."[1] The Supreme Court reasoned that "[t]he process of educating our youth for citizenship... is not confined to books...; schools must teach by example the shared values of a civilized social order."[2]

Effectively broadening the concept of the "educational process" to include fundamental values, the Supreme Court in *Bethel* essentially extended the reach of the ordinary disciplinary code to serve objectives that, rather than being reflected in actual curriculum-based activities, are part of the perceived educational mission. *Bethel* gives school officials the authority to:

- regulate lewd and offensive conduct by students as a way of teaching values; and
- discipline students so as to protect the school educational mission from the appearance of compromise.

There is now a sufficient base of state and federal cases to analyze the impact of these rules on school discipline cases. Emerging are two distinct notions of *"Bethel* discipline." In the first, schools impose a higher standard of conduct and as a result punish inappropriate behavior — even off-campus behavior — when the student appears to be representing the school. In the second, activities sponsored by the school are subject to greater control by school authorities than unsponsored activities — and participating students are held to a higher standard of conduct — because educators have a legitimate interest in assuring that participants in the sponsored activity learn whatever lessons the activity is designed to teach.

The first area is the most far-reaching and controversial. Therein, school officials seek to hold students accountable for their conduct as a condition for maintaining some ongoing relationship. The relationship, in most cases, involves an extracurricular activity that draws attention to the student and makes them an unofficial agent for the school in the community.

Brands v. Sheldon Community Schools, 671 F.Supp. 627 (N.D. Iowa 1987), is an example of such a case. In *Brands,* a member of the school's wrestling team and defending state champion with nearly a perfect record in four years of competition was suspended from high school for an off-campus sexual assault. The court upheld both the class-related suspension and the decision of school officials declaring the student ineligible for the remainder of the wrestling season.

This *"Bethel* discipline" was appropriate because the student had engaged in conduct that "interfered with the maintenance of school discipline... and which was detrimental to the best

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interests of the Sheldon Community School District."[3] The judge in *Brands* writes, "The influence of the students involved is an additional consideration. Standout students, whether in athletics, forensics, dramatics or other interscholastic activities, play a somewhat different role from the rank and file. Leadership brings additional responsibility. These student leaders are looked up to and emulated. They represent the school and depict its character."[4]

Courts in similar cases are in accord that students with special duties or in special relationships with schools may be held to a higher degree of conduct as one would, for example, an elected official. This reasoning has influenced the adoption of school policies that require drug testing in extracurricular activities.

In the case of *Schaill v. Tippecanoe County School,* 679 F.Supp. 833 (N.D. Ind. 1988), aff'd 864 F.2d 1309 (7th Cir. 1989), the school district successfully argued that "student athletes are especially respected by the student body, and accordingly are expected to be "good examples of conduct, sportsmanship and training, which includes avoiding drug and alcohol usage."[5] At least one lower court, in *Brooks v. East Columbus School District,* 730 F.Supp. 759 (S.D. Tex. 1989), ruled that extracurricular relationships cannot provide the basis for special regulations on student conduct when the condition [drug testing] requires the waiver of a fundamental right of privacy.

The second line of *"Bethel* discipline" cases involves sponsorship. The leading case is the 1988 Supreme Court decision in *Hazelwood School District v. Kuhlmeier,* 108 S.Ct. 562 (1988), where it was held that school officials could regulate inappropriate student expression that occurred in connection with the class-sponsored activity of publishing a school newspaper. The premise behind *Hazelwood* is that schools may control the perceptions created by sponsored programs as well as the messages communicated to observers. The Constitution does not require that public schools tolerate or imply approval of student conduct or speech in sponsored activities which comes into conflict with its educational mission.

In *Palmer v. Merluzzi,* 868 F.2d 90 (3rd Cir. 1988), the court approved a 10-day out-of-school suspension and a 60-day suspension from sports of a student — the starting wide receiver on the high school's football team — who admitted drinking beer and smoking marijuana on campus while completing a class-sponsored project.

Similarly, in *Polling v. Murphy,* 872 F.2d 757 (6th Cir. 1989), the court held that "[c]ivility is a legitimate pedagogical concern" in upholding disciplinary action taken against a student who used the following language in a school-sponsored speech: "The administration plays tricks with your mind and they hope you won't notice. For example, why does Mr. Davidson stutter while he is on the intercom? He doesn't have a speech impediment. If you want to break the iron grip of this school, vote for me for president."[6] The student was ruled ineligible for the student election and filed suit.

"Bethel discipline" is receiving decidedly mixed reviews in academia. Critics observe that school administrators who are more relaxed and self-confident simply will ignore rather than call attention to many of these incidents. Others note that lessons of intolerance implicit in some of the cases actually undermine the educational mission of juveniles and create an atmosphere of intimidation. The most serious concern relates to the due process rights of students. Fairness issues may arise out of the manner in which students are put on notice of the school's value-based conduct code as well as the manner in which sanctions are imposed.

For example, in the "relationship" line of cases, the ability of school officials to punish inappropriate student conduct may depend on whether the nature of the extracurricular activity is viewed as a "privilege" [see *Davis v. Churchill County School Board of Trustees,* 616 F.Supp. 1310 (D.Nev. 1985)], or as a "property interest" [see *Boyd v. Board of Education of McGehee School District No. 17,* 612 F.Supp. 86, 93 (D.Ark. 1985)].

In addition, most courts are willing to permit only suspensions of a limited duration rather than a total ban from the activity [see *Pegram v. Nelson,* 469 F.Supp. 1134, 1140 (M.D.N.C. 1979)]. In *Pegram,* the court sustained a state law that gave principles the power to suspend students for up to 10 days. Quoting from the Supreme Court decision of *Goss v. Lopez,* 419 U.S. 565 (1975), the court ruled, "We stop short of construing the Due Process Clause to require... that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witness to verify his version of the incident."

Essentially, as due process concerns grow, the degree of precision required concerning what is inappropriate conduct may, as a practical matter, make disciplinary codes impossible to enforce in "relationship" cases. However, the "sponsorship" line of cases would survive because here the student conduct is directly related to the sponsored activity and can be defined in pedagogical terms.

Finally, while it is true that many of the *"Bethel* discipline" cases involve student expression and raise First Amendment issues as well as school discipline issues, it is a mistake to read the *Bethel* developments as pertaining to just student speech. As the Supreme Court observes, "Schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent or offensive speech and conduct."[7] □

Notes:
1. 478 U.S. at 687, Brennan, J. concurring.
2. 478 U.S. at 683.
3. 671 F.2d at 629.
4. 671 F.2d at 633.
5. 679 F.Supp. at 839.
6. 872 F.2d at 759.
7. 478 U.S. at 683.