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ON EDUCATION AND THE LAW

IT IS A PLEASURE TO BE WITH YOU THIS EVENING. I HAVE BEEN ASKED TO TALK WITH YOU ABOUT THE TOPIC "EDUCATION AND THE LAW". SEVERAL YEARS AGO THAT TOPIC WOULD HAVE BEEN FAIRLY LIMITED IN SCOPE. TODAY, HOWEVER, THIS TOPIC ENCOMPASSES A GREAT NUMBER OF VARIED SUBJECTS ANY ONE OF WHICH IS DESERVING OF SEPARATE CONSIDERATION AND DISCUSSION. FOR EXAMPLE, IN THE LAST FEW YEARS THE COURTS HAVE BROUGHT UNDER THEIR SCRUTINY INTEGRATION AND THE BEST METHODS OF ACHIEVING IT, STUDENT DISCIPLINARY PROCEEDINGS, TEACHER DISMISSALS, PRAYER AND THE TEACHING OF RELIGION IN THE PUBLIC SCHOOLS, THE EDUCATION OF THE MENTALLY RETARDED AND THE HANDICAPPED, METHODS OF FINANCING THE PUBLIC SCHOOLS, AND THE VALIDITY OF STUDENT APPEARANCE REGULATIONS.

AS DIVERSE AND VARIED AS THESE SUBJECTS MAY BE, THERE IS ONE COMMON THREAD WHICH RUNS THROUGH ALL OF THEM. THAT THREAD IS THAT THE COURT DECISIONS IN EACH OF THESE AREAS ARE BASED UPON CONSTITUTIONAL PRINCIPALS. IT IS THESE PRINCIPALS THAT I WISH TO DISCUSS WITH YOU TONIGHT.

THOSE PORTIONS OF THE UNITED STATES CONSTITUTION MOST OFTEN COMING INTO PLAY WHEN SOME PART OF THE EDUCATIONAL PROCESS COMES

UNDER JUDICIAL SCRUTINY ARE THE EQUAL PROTECTION OF THE LAWS AND DUE PROCESS OF THE LAWS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. IT IS VERY DIFFICULT TO DEFINE EITHER OF THESE TERMS. IN FACT, ONE JUDGE HAS COMMENTED THAT "THESE TERMS ARE ABOUT AS WELL DEFINED AS THE COURSE OF A TORNADO." AND I MIGHT ADD SOMETIMES LEAVE ABOUT AS MUCH CHAOS IN THEIR TRAIL.

GENERALLY SPEAKING, EQUAL PROTECTION OF LAWS MEANS THAT THE LAWS OF THIS NATION ARE TO BE APPLIED TO ALL CITIZENS IN THE SAME MANNER UNLESS THERE IS SOME COMPELLING REASON TO DO OTHERWISE. THE EQUAL PROTECTION CLAUSE HAS BEEN THE BASIS OF ALL THE COURT DECISIONS INVOLVING THE QUESTION OF INTEGRATION OF THE SCHOOLS BEGINNING WITH THE EPOCH DECISION OF THE UNITED STATES SUPREME COURT IN BROWN V. TOPEKA BOARD OF EDUCATION IN 1954. IN THAT CASE, THE COURT HELD THAT A STATE-IMPOSED SYSTEM OF RACIAL SEGREGATION CANNOT STAND BECAUSE IT DENIES TO BLACK CHILDREN AN EQUAL OPPORTUNITY TO OBTAIN AN EDUCATION.

MOST RECENTLY, THE EQUAL PROTECTION CLAUSE WAS THE BASIS OF THE CHALLENGE TO THE USE OF LOCAL PROPERTY TAXES TO PARTLY SUPPORT THE PUBLIC SCHOOL SYSTEM. THIS METHOD OF FINANCING RESULTS IN A GREATER EXPENDITURE OF FUNDS IN WEALTHIER SCHOOL DISTRICTS THAN IN POORER SCHOOL DISTRICTS, AND, CONSEQUENTLY, IT WAS ARGUED THAT THIS DENIED TO THE CHILDREN IN THE POOR SCHOOL DISTRICTS THE OPPORTUNITY TO OBTAIN AN EQUAL EDUCATION. IN RODRIGUEZ V. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, HANDED DOWN ONLY LAST WEEK, THE COURT REJECTED THIS ARGUMENT AND SAID THAT THE EQUAL PROTECTION CLAUSE DOES NOT REQUIRE

ABSOLUTE EQUALITY OR PRECISELY EQUAL EDUCATIONAL OPPORTUNITIES.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT HAS BEEN THE BASIS OF MANY DECISIONS BY THE COURTS WHICH DEAL MORE DIRECTLY WITH STUDENTS AND TEACHERS. DUE PROCESS OF THE LAW ESSENTIALLY MEANS THAT NO PERSON SHALL BE DEPRIVED OF ANY RIGHT WITHOUT FIRST BEING NOTIFIED OF THE REASONS FOR THE ACTION TO BE TAKEN AGAINST HIM AND WITHOUT FIRST HAVING HAD THE OPPORTUNITY TO BE HEARD. THE GUIDING PRINCIPLE IS SIMPLY THE ATTAINMENT OF FUNDAMENTAL FAIRNESS.

TWO RECENT U.S. SUPREME COURT CASES, ROTH V. BOARD OF REGENTS AND PERRY V. SINDERMAN, HAVE ESTABLISHED SEVERAL GENERAL RULES REGARDING DUE PROCESS REQUIREMENTS AND THE DISMISSAL OF TEACHERS. AT THE OUTSET, IT SHOULD BE STATED THAT THESE RULES WHICH I SHALL DISCUSS ARE BY NO MEANS HARD AND FAST FOR IN EVERY CASE THE COURTS ATTEMPT TO BALANCE THE INTEREST AND DUTIES OF THE SCHOOL ADMINISTRATION AGAINST THE RIGHTS OF THE TEACHERS. LET ME NOW DISCUSS WITH YOU THE RULES OUTLINED BY THE COURT IN THESE TWO DECISIONS.

1. IF A TEACHER CAN SHOW THAT HE WAS DISMISSED OR NOT REHIRED PRIMARILY BECAUSE OF ENGAGING IN A CONSTITUTIONALLY PROTECTED ACTIVITY SUCH AS FREEDOM OF SPEECH, THEN, THAT TEACHER IS ENTITLED TO DAMAGES AND REINSTATEMENT.

2. ANY TIME A TEACHER ASSERTS THAT HE WAS FIRED OR NOT REHIRED BECAUSE OF ENGAGING IN SOME CONSTITUTIONALLY PROTECTED ACTIVITY, A TEACHER IS ENTITLED TO, AND SHOULD BE GIVEN THE DUE PROCESS REQUIREMENTS OF NOTICE AND HEARING.

3. IF ANY TEACHER IS TO BE DISMISSED FOR ANY REASON DURING

THE SCHOOL YEAR, HE IS ENTITLED TO NOTICE AND A DUE PROCESS HEARING.

4. IF ANY TEACHER IS NOT TO BE REHIRED AT THE END OF THE SCHOOL YEAR HE IS NOT ENTITLED TO A HEARING OR NOTICE OF THE REASONS FOR NOT BEING REHIRED UNLESS HE CAN SHOW THAT HE IS BEING DEPRIVED OF SOME "PROPERTY INTEREST" OR UNLESS HE CAN SHOW THAT SOME "LIBERTY" OF HIS HAS BEEN INFRINGED UPON BY THE SCHOOL ADMINISTRATION. BY "PROPERTY INTEREST" I MEAN THAT IF A TEACHER IS TENURED HE HAS A "PROPERTY INTEREST" IN CONTINUED EMPLOYMENT AND IS ENTITLED TO A HEARING AND MUST BE GIVEN REASONS FOR HIS DISMISSAL. IF THE TEACHER IS NOT TENURED THEN HIS MERE EXPECTANCY OF RE-EMPLOYMENT IS NOT A SUFFICIENT "PROPERTY INTEREST" TO ENTITLE HIM TO A HEARING AND REASONS FOR HIS DISMISSAL. BY "LIBERTY" I MEAN THAT IF A TEACHER ASSERTS THAT HE IS NOT BEING REHIRED BECAUSE OF ENGAGING IN SOME CONSTITUTIONALLY PROTECTED ACTIVITY SUCH AS FREEDOM OF SPEECH OR FREEDOM OF ASSOCIATION HE IS ENTITLED TO THE DUE PROCESS REQUIREMENTS OF NOTICE AND A HEARING.

MOST OF THESE RULES WERE EMBODIED IN THE TEACHER TENURE LAW ENACTED BY THE 1971 SESSION OF THE GENERAL ASSEMBLY WITH WHICH I'M SURE YOU ARE ALL FAMILIAR. FOR EXAMPLE, NO "CAREER TEACHER" MAY BE DISMISSED, DEMOTED OR NOT REHIRED EXCEPT FOR CERTAIN ENUMERATED REASONS AND WITHOUT COMPLYING WITH CERTAIN NOTICE AND HEARING REQUIREMENTS EXPRESSLY PROVIDED FOR IN THE TENURE LAW. FURTHERMORE, NO "PROBATIONARY" TEACHER CAN BE DISMISSED DURING THE SCHOOL YEAR WITHOUT COMPLYING WITH THE NOTICE AND HEARING REQUIREMENTS. THE ONLY REQUIREMENT LAID DOWN BY THE SUPREME COURT NOT FOUND IN THE TENURE LAW IS THAT ANY TEACHER WHO ALLEGES THAT HE HAS BEEN

DISMISSED OR NOT REHIRED FOR ENGAGING IN CONSTITUTIONALLY PROTECTED ACTIVITY, MUST BE AFFORDED THE DUE PROCESS REQUIREMENTS. WHEN CONSIDERING THAT THE TENURE LAW WAS ENACTED PRIOR TO THE U.S. SUPREME COURT DECISIONS, I THINK YOU WILL AGREE WITH ME THAT THE LEGISLATURE DID AN EXCELLENT JOB OF ANTICIPATING THE TREND OF THE COURT DECISIONS IN THIS AREA.

LET US NOW TURN TO A DISCUSSION OF DUE PROCESS OF THE LAW AND STUDENT DISCIPLINARY PROCEEDINGS. AS IN THE DISMISSAL OF TEACHERS, THE FUNDAMENTAL PRINCIPLE FOLLOWED BY THE COURTS IN REVIEWING DISCIPLINARY PROCEEDINGS AGAINST STUDENTS IS WHETHER OR NOT THE STUDENT HAS BEEN TREATED FAIRLY.

A WELL-KNOWN LEGAL SCHOLAR HAS STATED THAT THE DEGREE OF PROTECTION TO WHICH ONE IS ENTITLED IS IN DIRECT PROPORTION TO THE EXTENT OF POTENTIAL HARM THREATENED. IN THOSE INSTANCES WHERE THE DISCIPLINARY ACTION TO BE TAKEN AGAINST THE STUDENT IS SLIGHT, SUCH AS BEING KEPT IN AFTER SCHOOL OR SUSPENDED FOR A SHORT PERIOD OF TIME (TWO OR THREE DAYS), FOLLOWED BY AUTOMATIC REINSTATEMENT, THE PENALTY IS REGARDED AS A DETERRENT OR AS A PART OF THE LEARNING PROCESS, AND WILL HAVE LITTLE OR NO LONG-RANGE HARMFUL EFFECT ON THE STUDENT. ALTHOUGH THE REQUIREMENTS OF DUE PROCESS MAY NOT BE ENTIRELY NECESSARY IN THESE INSTANCES, THE CHILD SHOULD AT LEAST BE GRANTED THE CHANGE TO TELL HIS SIDE OF THE STORY.

PUBLIC SCHOOL PERSONNEL ARE CONFRONTED WITH AN ENTIRELY DIFFERENT SITUATION, HOWEVER, WHEN THE POTENTIAL PUNISHMENT

BECOMES SEVERE, SUCH AS EXPULSION, OR A LONG-RANGE OR INDEFINITE SUSPENSION. HERE IT IS ABSOLUTELY NECESSARY THAT CERTAIN ELEMENTS EMBODIED IN THE CONCEPT OF DUE PROCESS BE BROUGHT INTO PLAY.

THOSE ELEMENTS WHICH ARE EMBODIED IN THE CONCEPT OF DUE PROCESS CONCERNING STUDENT DISCIPLINE ARE:

I. THE RULES AND REGULATIONS OF THE SCHOOL SHOULD BE PROMULGATED IN WRITING AND MADE AVAILABLE TO ALL OF THE STUDENTS. THESE RULES NEED NOT BE AS DETAILED AS CRIMINAL STATUTES BUT THEY SHOULD NOT BE SO VAGUE THAT INTELLIGENT PEOPLE MUST GUESS AT THEIR MEANINGS. AN EXAMPLE OF AN OVERLY-VAGUE RULE WOULD BE THAT STUDENTS MUST "CONDUCT THEMSELVES AS LADIES AND GENTLEMEN". FURTHERMORE, THE RULE SHOULD NOT BE ARBITRARY BUT SHOULD BEAR A REASONABLE RELATIONSHIP TO THE ENHANCEMENT OF THE EDUCATIONAL PROCESS, OTHERWISE THEY ARE SUBJECT TO BEING STRUCK BY THE COURTS AS UNREASONABLE. THE BEST EXAMPLE OF RULES AND REGULATIONS WHICH HAVE BEEN HELD TO BEAR NO REASONABLE RELATIONSHIP TO THE ENHANCEMENT OF THE EDUCATIONAL PROCESS ARE STUDENT DRESS AND HAIR LENGTH REGULATIONS.

2. IT IS ABSOLUTELY ESSENTIAL THAT SOME SORT OF HEARING BE HELD BEFORE ANY STUDENT IS SUSPENDED OR EXPELLED. THERE ARE SEVERAL FACTORS WHICH THE COURT WILL LOOK AT IN DETERMINING WHETHER OR NOT THE HEARING IS CONSISTENT WITH DUE PROCESS REQUIREMENTS. THESE FACTORS ARE:

A. THE CHILD MUST RECEIVE NOTICE OF THE CHARGES AGAINST HIM. THIS NOTICE SHOULD BE IN WRITING; SHOULD STATE WHAT RULE HAS BEEN VIOLATED; AND SHOULD SUMMARIZE THE PERTINENT FACTS SPECIFICALLY. THIS NOTICE SHOULD BE GIVEN FAR ENOUGH IN ADVANCE OF THE HEARING TO ENABLE THE STUDENT TO ADEQUATELY

PREPARE HIMSELF. IN ALL BUT THE MOST COMPLEX CASES, TWO DAYS TO ONE WEEK'S NOTICE SHOULD BE ADEQUATE,

B. ALTHOUGH NOT ABSOLUTELY NECESSARY, IT IS ADVISABLE THAT THE STUDENT BE ALLOWED TO INSPECT ALL DOCUMENTS AND OTHER EVIDENCE THAT WILL BE USED AGAINST HIM AT THE HEARING. IT IS FURTHER ADVISABLE THAT HE BE ALLOWED TO PRESENT EVIDENCE AND WITNESSES IN HIS DEFENSE IF HE SO DESIRES. THE VOLUME OF THE EVIDENCE AND THE NUMBER OF WITNESSES IS SUBJECT TO THE SOUND DISCRETION OF THE PERSON CONDUCTING THE HEARING AND HE NEED NOT ALLOW REPETITIOUS AND IRRELEVANT TESTIMONY.

C. IT IS ALSO ADVISABLE, THOUGH AGAIN NOT ABSOLUTELY NECESSARY, THAT SOME WRITTEN RECORD BE MADE OF THE HEARING. IDEALLY, A VERBATIM STENOGRAPHIC TRANSCRIPT SHOULD BE MADE.

D. ALTHOUGH A CHILD IS NOT ENTITLED TO THE ASSISTANCE OF LEGAL COUNSEL AT THE HEARING, IF THE CHILD OR PARENTS REQUEST THAT COUNSEL BE IN ATTENDANCE IT SHOULD BE PERMITTED. THIS DOES NOT MEAN, OF COURSE, THAT SUCH COUNSEL SHOULD BE PROVIDED AT PUBLIC EXPENSE, AS IT WOULD BE FOR A CRIMINAL DEFENDANT.

E. OF SINGLE IMPORTANCE IS THAT THE STUDENT MAY NOT BE ADJUDGED GUILTY WITHOUT SUPPORT OF SUBSTANTIAL EVIDENCE. MANY CASES HAVE BEEN DECIDED IN COURT IN THE STUDENT'S FAVOR EITHER BECAUSE THE SCHOOL AUTHORITIES' DECISION WAS WITHOUT EVIDENTIAL SUPPORT, OR BECAUSE THE EVIDENCE WAS NOT REPORTED IN WRITING AND HENCE BORE THE APPEARANCE OF ARBITRARINESS. IN ANY CASE WHERE THERE IS A POSSIBILITY

OF EXPULSION OR INDEFINITE SUSPENSION, IT IS CERTAINLY ADVISABLE THAT THOSE PEOPLE WHO HAVE KNOWLEDGE OF OR OBSERVED THE MISCONDUCT OF THE STUDENT BE PRESENT AT THE HEARING AND TESTIFY.

F. ALTHOUGH NOT A DUE PROCESS CONSIDERATION, THE QUESTION HAS ARISEN IN STUDENT DISCIPLINARY PROCEEDINGS AS TO WHETHER OR NOT EVIDENCE SEIZED FROM A STUDENT'S LOCKER OR FROM HIS PERSON IS ADMISSIBLE AGAINST HIM. THERE APPEARS TO BE SOME CONFLICT IN THE COURT DECISIONS COMING FROM OTHER PARTS OF THE COUNTRY, BUT OUR OFFICE HAS ALWAYS TAKEN THE POSITION THAT SCHOOL ADMINISTRATORS MAY SEARCH STUDENTS' LOCKERS AND THEIR PERSON WHEN THEY HAVE REASONABLE GROUNDS TO BELIEVE THAT DRUGS, ALCOHOLIC BEVERAGES OR WEAPONS MAY BE PRESENT IN THE SCHOOL AND SUSPEND OR EXPEL STUDENTS ON THE BASIS OF ANY EVIDENCE FOUND. THIS DOES NOT MEAN THAT WE ADVISE SCHOOL ADMINISTRATORS TO GO ON ANY "FISHING EXPEDITIONS" THROUGH STUDENT LOCKERS BUT IF THE ADMINISTRATOR HAS GOOD REASON TO BELIEVE THAT SUCH CONTRABAND MAY BE PRESENT, ANY RIGHTS OF INDIVIDUAL STUDENTS MUST GIVE WAY TO THE SAFETY AND WELFARE OF ALL THE STUDENTS.

MANY OF YOU BY NOW MAY HAVE GAINED THE IMPRESSION THAT THESE DUE PROCESS REQUIREMENTS MAKE IT VERY DIFFICULT FOR SCHOOL ADMINISTRATORS TO DISMISS INCOMPETENT TEACHERS AND MAKE MORE DIFFICULT THE ENFORCEMENT AND MAINTENANCE OF DISCIPLINE AMONG STUDENTS IN THE PUBLIC SCHOOL. THAT, HOWEVER, IS CERTAINLY NOT THE PURPOSE OF THE DUE PROCESS REQUIREMENTS, NOR DO I BELIEVE THAT GENERALLY THESE

REQUIREMENTS HAVE THAT EFFECT. DUE PROCESS DOES NOT, IN ANY WAY, PROHIBIT THE DISMISSAL OF TEACHERS OR THE DISCIPLINING OF STUDENTS, BUT ONLY REQUIRES THAT FAIRNESS BE OBSERVED BEFORE TAKING SUCH ACTION.

ONE OF THE BASIC CAUSES OF THE PRESENT TROUBLES IN THE EDUCATIONAL SYSTEM IS A FEELING OF DISTRUST AND LACK OF COMMUNICATION BETWEEN STUDENT AND TEACHER, BETWEEN STUDENT AND ADMINISTRATOR, AND BETWEEN TEACHER AND ADMINISTRATOR. IF WE CAN INSTILL CONFIDENCE IN EACH PARTICIPANT IN THE EDUCATIONAL PROCESS THAT HE WILL BE DEALT WITH AND TREATED FAIRLY IN ALL SITUATIONS, THEN I BELIEVE WE CAN GO A LONG WAY TOWARD ACHIEVING A BETTER EDUCATIONAL SYSTEM. I BELIEVE, AND I THINK YOU WILL AGREE, THAT THE MAINTENANCE OF DISCIPLINE AND CONTROL IN THE SCHOOLS AND THE OBSERVANCE OF FUNDAMENTAL FAIRNESS ARE IN NO WAY CONTRADICTORY.

IN CLOSING, LET ME ADD THESE COMMENTS. THE LEGAL CONCEPTS EVOLVING FROM COURT DECISIONS IN THE AREA OF EDUCATION ARE INTENDED TO BE ONLY A ROUGH FRAMEWORK OR POINT OF REFERENCE BY WHICH EACH SCHOOL SYSTEM CAN MEASURE ITS OWN REGULATIONS AND RULES. THEY ARE NOT HARD AND FAST RULES WHICH ARE TO BE APPLIED IN EVERY SITUATION.

THE SUPREME COURT OF THE UNITED STATES IN A RECENT DECISION RECOGNIZED THAT THE CONSTITUTIONAL RIGHTS OF TEACHERS AND STUDENTS ARE TO BE "APPLIED IN THE LIGHT OF THE SPECIAL CHARACTERISTICS OF THE EDUCATIONAL ENVIRONMENT." THE MOST MEANINGFUL RULES WILL BE THOSE DEVELOPED IN EACH SCHOOL SYSTEM RATHER THAN THOSE WHICH EVOLVE FROM OCCASIONAL JUDICIAL OPINIONS WHICH TOUCH ONLY BRIEFLY

ON VERY BROAD PROBLEMS.

IF THE COURTS ARE LIKELY TO BE MORE DISPASSIONATE IN ASSESSING THE PROBLEMS IN OUR SCHOOLS AFTER THEY HAVE ARISEN, THE SCHOOL PERSONNEL SHOULD BE MORE COMPETENT IN ANALYZING THE PROBLEMS BASED ON THEIR BACKGROUND, KNOWLEDGE, EXPERIENCE AND PERCEPTION. THE SCHOOL SYSTEMS THEMSELVES SHOULD PRODUCE THE MOST SIGNIFICANT REGULATIONS TO GUIDE THEIR OWN CONDUCT. I AM CONFIDENT THAT THE TEACHERS AND ADMINISTRATORS IN THE SCHOOLS OF THIS STATE ARE CAPABLE OF MEETING AND SOLVING THESE PROBLEMS AND ASSURING FAIRNESS TO EVERY PARTICIPANT IN THE EDUCATIONAL PROCESS.