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Freedom of Expression in Secondary Schools

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Freedom of Expression in Secondary Schools

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Guzick v. Drebus,[1] currently under consideration on appeal to the United States Court of Appeals for the Sixth Circuit, raises important questions concerning the application of the First Amendment to secondary school students.

The case may well be typical of hundreds of other instances in which a local school board, for one reason or another, has experienced difficulty in giving full effect to the Supreme Court's most recent pronouncement on the subject. *Tinker v. Des Moines Independent Community School District*[2] held that a school board regulation prohibiting the wearing of black armbands to school in protest against the war in Vietnam was unconstitutional. The wearing of symbols of political or controversial significance, by high school students, *in circumstances entirely divorced from actual or potentially disruptive conduct,* is constitutionally protected free speech.

The issue was ready for Supreme Court determination. The District Court had upheld the school board's regulation on the ground that it was reasonable in order to prevent disturbance of school discipline.[3] On appeal, the Court of Appeals for the Eighth Circuit, sitting *en banc,* was equally divided and the District Court's decision therefore affirmed, without opinion.[4]

At about the same time, the Fifth Circuit had decided two cases involving the same question. In *Burnside v. Byars*,[5] the enforcement of a prohibition against the wearing of freedom buttons to school by high school students was held unconstitutional where there was no evidence that the wearing of such buttons "materially and substantially interfered with the requirements of appropriate discipline in the operation of the school." On the same day, the same panel, in *Blackwell v. Issaquena County Board of Education*,[6] applying the same legal principle, reached an opposite conclusion, declining to enjoin the enforcement of a similar

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1 Memorandum Opinion and Order, No. C 69-209, United States District Court for the Northern District of Ohio, Western Division, May 6, 1969. (Case No. 19,681, on appeal to the United States Circuit Court of Appeals for the Sixth Circuit.)

2 393 U.S. 503 (1969).

3 258 F. Supp. 971 (S.D. Ia. 1966).

4 383 F. 2d 988 (8th Cir. 1967); *cert. granted* 390 U.S. 942 (1968).

5 363 F. 2d 744 (5th Cir. 1966).

6 363 F. 2d 749 (5th Cir. 1966).

school regulation where the students wearing freedom buttons harassed students who did not wear them, and created considerable disturbance and disruption. The lower court in *Tinker* had expressly refused to follow the Fifth Circuit's holding in *Burnside.*

The Guzick Case—Inadvertent Racial Refinement of Tinker?

Within two weeks of the *Tinker* decision, startlingly similar facts launched another high school case.

Tom Guzick was seventeen, in the eleventh grade, and one of some two thousand students at Shaw High, a public school in East Cleveland, Ohio. On March 10, 1969, Tom Guzick wore a peace button to school. The button was inscribed:

April 5 Chicago
GI-Civilian
Anti-War
Demonstration
Student Mobilization Committee.

The message on the button referred to a forthcoming demonstration against the war in Vietnam. A permit to march had been obtained by the demonstrators from the City of Chicago; the march was to be entirely peaceful and confrontations of any kind were to be avoided.[7]

At the end of his uneventful school day, Guzick was asked about his peace button by two fellow-students; his reply prompted only a casual answer.

The following day Guzick and a fifteen year-old friend, Hunter Havens, a ninth grader, both came to school wearing the anti-war buttons. They went to Principal Drebus' office to inquire about distributing leaflets at school and were advised that this was not permitted. The principal ordered the boys to remove their buttons. Havens complied; Guzick refused. Thereupon, Principal Drebus suspended Guzick from Shaw High School until such time as he would return to school without his peace button.

At no time during the button-wearing period did Guzick conduct himself in a disorderly or improper manner; nor was there any disruption of, or interference with, the educational process at Shaw High School.

On March 17th a suit was filed by Thomas Guzick, Sr., on behalf of his son, in the United States District Court for the Northern District of Ohio, Eastern Division. Named as defendants were the principal of Shaw High School and (on the ground that they had, in their official capaci-

[7] The demonstration did, in fact, take place as planned, without confrontation or violence. An estimated thirty-five thousand people gathered in Chicago on April 5, including approximately five hundred persons from the Cleveland area, of which about three hundred were high school students.

ties, ratified, approved, or encouraged Principal Drebus' suspension of Guzick) the members of the East Cleveland Board of Education, and the Superintendent of the East Cleveland School District.

The complaint, filed pursuant to the provisions of Title 42, U.S.C.A. § 1983,[8] alleged that the suspension deprived Guzick of his right to wear his peace button, a right guaranteed by the First Amendment to the United States Constitution; and that, as similar buttons are worn by students in other high schools in the Cleveland area, Guzick was also deprived of the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution. Plaintiff also alleged that his son's suspension was without just cause, without a hearing, and without due process of law. However, as the procedural due process issue was not ruled upon by the District Court, nor pressed on appeal, it is not discussed here.[9]

Guzick sought to enjoin the defendants from interfering with his right to wear the button while attending school, and from refusing to reinstate him at Shaw; the complaint also asked for a declaratory judgment that any rule or regulation of the East Cleveland Board of Education prohibiting the wearing of such buttons is unconstitutional.

After five days of evidentiary hearing, ending on March 26, 1969, the District Court found for the defendants and dismissed Guzick's complaint.

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[8] This section, which also served as the jurisdictional base in the *Tinker* case, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[9] The issue is dealt with extensively in Abbott, Due Process and Secondary School Dismissals, 20 CWRU L. Rev. 380 (1969). Zanders v. Louisiana State Board of Education, 281 F. Supp. 747, 761 (W.D. La. 1968) is typical of the trend:

> As an enlargement on previous decisions, we strongly recommend that disciplinary rules and regulations adopted by a school board be set forth in writing and promulgated . . . to reach all parties subjected [thereto]. . . . Moreover we recommend that each disciplinary procedure incorporate some system of appeal. . . .

Dixon v. Alabama State Board of Education, 294 F. 2d 150 (5th Cir. 1961); and Knight v. State Board of Education, 200 F. Supp. 174 (M.D. Tenn. 1969) are the leading procedural due process cases.

For an excellent discussion of due process vis-a-vis the high school student, *see* Madera v. Board of Education of City of New York, 267 F. Supp. 356, 369 (S.D. N.Y. 1967), *rev'd.*, 386 F. 2d 778 (2d Cir. 1967), *cert. denied,* 390 U.S. 1028 (1968).

For a comprehensive coverage of the subject at the college level, *see* Seavey, Dismissal of Students: "Due Process," 70 Harv. L. Rev. 1406 (1957); Note, Developments in the Law—Academic Freedom, 81 Harv. L. Rev. 1045 (1968); and the widely consulted product of New York University School of Law's Research Seminar on Student Conduct and Discipline, Student Conduct and Discipline Proceedings in a University Setting, New York University School of Law (1968). See also two of the leading cases, Buttny v. Smiley, 281 F. Supp. 280 (D.-Col. 1968) and Cooper v. Aaron, 358 U.S. 1 (1958).

The Court specifically found that the "button at issue in the instant case did not convey an inflammatory message"; and that although there was evidence (*i.e.*, the opinion of one of the school officials) that the message conveyed by this particular button *might* be such as to inflame *some* of the students at Shaw High, the Court could not agree, nor find, that such a result was likely.[10]

The Court did find, however, that if *this* button were permitted, administrative difficulty in "applying a selective rule" [11] would require that permission be granted for the wearing of all sorts of *other* buttons, and the wearing of *these other buttons* would "exacerbate a type of racial tension which is peculiar to Shaw." [12] The conditions "peculiar to Shaw" were specifically detailed by the court as follows:

a) the institution is not new; it includes many old buildings with corridors and connecting tunnels, built for fewer students, which are now congested;

b) the neighborhood, at one time an almost exclusively white community, has become during the last few years, a racially mixed community;

c) approximately seventy percent of the students are black; thirty percent are white;

d) there has been considerable friction between the students of the two races as well as among students of the same race;

e) however, there has not, as yet, been a serious racial disturbance at Shaw High School;

f) John Hay High School, one mile to the west, and predominately black (99%), suffered repeated disturbances and was forced to close for several days, though not as the result of racial incidents between students; and

g) three additional nearby high schools with large percentages of black students have had serious disturbances.[13]

These, then, are the conditions creating that "peculiar racial tension" deemed sufficient, by the *Guzick* court, to justify its refusal to follow the decision in *Tinker*.

As both cases were characterized by, and limited to, orderly behavior, without any actual disruption of either school's educational process, the practical result of the *Guzick* court's rationale, though per-

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[10] Opinion, *supra* n. 1 at 14.

[11] *Id.* at 16.

[12] *Id.* at 11.

[13] *Id.* at 4-5. The Opinion did not refer to uncontradicted testimony of defendant's witnesses elicited on cross examination that Shaw students are "no less mature, intelligent, or reasonable" than students at other schools in the Cleveland area, where buttons are permitted (R. 506, 564, 613, 519).

haps inadvertent, is logically inescapable. *The right to express one's point of view on a politically controversial issue (such as the Vietnam war), in an orderly fashion, is constitutionally protected in a racially homogenous high school in Des Moines, Iowa;*[14] *the same right is prohibited to students in a high school in racially tense East Cleveland, Ohio.*

The majority in *Tinker* held that mere "undifferentiated fear or apprehension of disturbance" is not enough to abridge a student's right to orderly freedom of expression, and classified the following as no more than examples of such undifferentiated fear: the feeling that something "difficult to control" might evolve because a former student was killed in Vietnam and some of his friends were still in school; rumors that other students would "wear armbands of other colors if the black bands prevailed;" the fact that debate over the Vietnam war had become "vehement" or "violent" in many localities; and that a wave of draft-card burnings had swept the country.[15] The Court specifically noted "it was not fear of disruption that motivated the regulation prohibiting armbands. . . . School authorities simply felt that the schools are no place for demonstrations." [16]

A search of the Opinion and the trial record in *Guzick* provides nothing more effective. There is a similar reference to the possible ill effect on friends or relatives of former students killed in Vietnam;[17] a like reference to "other buttons" which will be worn in retaliation;[18] and similar references to vehement reactions in other localities or other schools.[19]

Although the original motivation behind the "no-button" regulation at Shaw may have been the prevention of disruption by exuberant high school fraternities 30 years ago, the present absolute prohibition against the wearing of insignia or buttons is no more related to a fear of specific interference with the educational process than was the hastily adopted prohibition against armbands in *Tinker*.[20] Principal Drebus testified that the rule is absolute:

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[14] *Tinker* involved no "racial overtones." In a telegraphic reply to the authors, the superintendent of the Des Moines school board stated, "Color had no bearing on this case."

[15] Tinker v. Des Moines Independent Community School District, *supra* n. 2 at 509 n. 3.

[16] *Id.*

[17] Testimony by one of defendant-school board members. (R. 512).

[18] Opinion, *supra* n. 1, at 14.

[19] *Id.*

[20] Distinguishing *Guzick* from *Tinker* (*see* Opinion, *supra* n. 1 at 22) on the ground that the Shaw High regulation prohibiting buttons is one of long standing, even-handedly applied whereas the regulation in *Tinker*, on short notice, prohibited only the symbolic expression against the Vietnam war, is not relevant. Clothing a rule with age does not alter the nakedness of the wrong. Both school regulations are arbitrary because they prohibit constitutionally protected free expression unaccompanied by any disorder or disturbance, actual or nascent, of the school or of the rights of

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> . . . the *test is not whether there is any interference with classroom activity,* it is just a flat policy.[21] (*Emphasis supplied.*)

If *Guzick* is affirmed, a racial refinement will have been engrafted onto the holding in *Tinker*; integration, *per se,* will thereby have been deemed tantamount to "differentiated fear." If secondary school officials can, on the basis of integration, alone, not only supervise but also totally prohibit the flow of ideas deemed "too emotional and controversial," then opportunities for learning in practical democracy will indeed have been severely curtailed—and curtailed in the very schools whose students most need experience in adjusting comfortably to an inter-racial world.

> It is on precisely those issues which stir up emotion and controversy and in precisely those parts of the country where they are most emotional and controversial, that rational discussion is most needed; and the sooner it can begin in the educational process the better off the country will be.[22]

Guzick and Tinker—Theories of Education and the Law

One of the most zealously cherished Tenth Amendment powers reserved to the individual states has been their right, through local school boards and school officials, to provide for the education of the young. Theories of education (*i.e.,* what shall be taught, by teachers of what particular qualifications, with what special emphasis, approach, and general educational aim) have been stamped with a peculiar provincialism. Differences in geography, climate, economic pursuit, ethnic background and education all combine to ensure great divergence of attitude from community to community. The only certainty is that whatever the special point of view, it will be tenaciously supported and usually by individuals of closed mind and open mouth. Even the dull-witted and the timid become self-appointed, vociferous experts when the issues at stake involve the education of their children.

This total local control over the education of the young is, on occasion, challenged by a student, a parent or a teacher asserting (ordinarily) a First Amendment right which collides with local policy, practice or regulation. The judiciary, called upon to vindicate the alleged right hence becomes involved, albeit unwittingly and certainly not by choice, in educational theory and practice.

(Continued from preceding page)

other students. If the suppression of views on *one* particular political controversy under such circumstances is unconstitutional (*Tinker*), then the suppression of *all* political expression, in advance, is *a fortiori,* unconstitutional. *Accord:* Hammond v. South Carolina State College, 272 F. Supp. 947 (D.S.C. 1967) (rights of university students to peaceably demonstrate) discussed in Note, 81 Harv. L. Rev. 1045 (1968) at 1131.

[21] Drebus' testimony (R. 25).

[22] Hutchins, The Constitution of Public Education, 2 Center Magazine 8 (July 1969).

To their credit, the judges have been consciously aware that the judiciary ought not, under the guise of securing First Amendment rights, in effect assume the task of "running" the local public schools.

Justice Black is not alone in his concern that upholding a high school student's right to freedom of expression will involve the Court in a snowballing operation, when secondary "school pupils are not wise enough, even with the Court's expert help from Washington, to run the 23,390 public school systems in the 50 States." [23] On the other hand, the *Gault* case seems to have established in the minds of most of us, including Mr. Justice Black, the fact that neither the Fourteenth Amendment nor the Bill of Rights is for the benefit of adults alone.[24]

Judicial divergence of opinion has traditionally stemmed primarily from judges' divergent philosophies of law—what it is, or ought to be. The opinions in *Guzick* and *Tinker* are striking because the divergence of judicial opinion appears to be based less on differences in legal viewpoint than on differences of opinion on theories of education. Apparently judges, like everyone else, tend to express themselves with strong emotional overtones when the question involves educating children.

The majority in *Tinker,* on the one hand, and Black's dissent and the opinion in *Guzick* on the other, are graphic in juxtaposing two entirely different views on the theory of education, and the respective roles to be played by both students and teachers.

Justice Black is not merely impatient with high school students' involvement in controversial political issues; he is exasperated. In his view, the solution to "students all over the land . . . running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins . . ." is a return to old-fashioned school discipline, and old-fashioned parental control. Students are to be repressed at least long enough to sit still, keep their minds on their work, and acquire educations.[25]

The *Guzick* court, more paternalistic and protective, hence deeply concerned about the ability of teen-agers to make sound decisions and resist unsound temptations, similarly approves relatively repressive school regulations for the sole reason that more permissive rules *might* result in distraction from studies and in discipline run amuk.

A focus on the problem from the traditional adversary approach of the law necessitates solving a question of balance: the extent to which First Amendment rights to freedom of expression shall be secured for secondary school students, balanced against the right of the community to control education, which presupposes the enforcement of sufficient

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[23] Dissenting, in Tinker v. Des Moines Independent Community School District, et al. *supra* n. 2, at 516.

[24] In re Gault, 387 U.S. 1 (1967).

[25] Dissent, *supra* n. 23 at 515.

regulation to provide that discipline necessary for the day-to-day operation of the schools.

An approach based on educational, rather than legal, theory provides a different focus—the concern need not be "adversary"; rather it proceeds from a primary concentration on the conditions that must be ensured in order to provide young people with the optimum in training and education.

Before espousing, with Justice Black, a return to old-fashioned values, it is relevant to consider briefly some of the "extra-legal" changes emphasized by scholars from other disciplines, changes which may indicate that we may well be disappointed in the results that can be achieved by returning to "the old, the tried and the true."

a) *The secondary school student.* A product of his present day elementary school curriculum, he is—compared to his father or grandfather at the same age—larger physically; is reaching adolescence sooner; is more widely read; is more involved with current issues; is better educated sooner, and will reach intellectual and emotional maturity earlier.

> The survey of instructional practices reported in the National Educational Association Project . . . showed as one of the *most widespread changes the teaching of a number of subjects at an earlier age* . . . over one half of all secondary-school principals reported this trend . . . over ⅕ of the schools were teaching certain mathematics courses at lower grades than . . . previously. Science, reading and social studies were also taught . . . at an earlier age . . . more than ½ of the secondary schools have moved courses to lower years. The downward movement of courses has created room in the curriculum in the upper grades for new, more advanced courses, *thus making possible the introduction of material formerly reserved for college.* . . . (Emphasis supplied.)[26]

b) *Technological change.* It has become in the nature of a cliché to dwell upon the remarkably burgeoning technology of our age, or to suggest that we are totally unprepared to face most of the problems of today partly because not even the theory underlying the technology that creates them was in existence when we went to school. Yesterday's knowledge is no longer today's truth. For example, we learned about a simple and solid physical law concept—gravity; we now have had to adjust to the fact that "what goes up must come down" is no longer truth —it just may go into orbit.

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[26] Project on the Instructional Program of the Public Schools, The Principals Look at the Schools, NEA 1962, quoted in Curriculum Planning by Saylor & Alexander, (Holt, Rinehart and Winston, Inc., 1966). An interesting contrast in generation-gap education is provided by White, The Making of the President, 1968. The comparison is between Lyndon Johnson's schooling & textbooks (at 112-116) (providing moral certainty about many issues) and the "clean-for-Gene group," (at 78-101) (who share a certainty only about the relativeness of things).

See also Keniston, The Young Radicals—Note on Committed Youth, *passim*, and extensive bibliography at 361-368 (Harcourt, Brace & World, Inc. 1968).

c) *The knowledge explosion.* In contrast to the unilinear technological change which may be recorded by each of us, is the sum total of a geometric, rather than an arithmetic, progression in the totality of man's knowledge. The concept implies both mass of information, and the rapidity with which it accumulates.[27] There was a time when philosophers worth their salt were able to know enough about all the disciplines to develop philosophies that embraced all. We have become a race of experts; our knowledge of the trees has become so complicated that only the computers can retain it all, and so far the computers have not been able to provide humanized philosophies of the forests.

The important conclusion is that today's secondary student was born into the world of technological change and knowledge explosion. He takes them both for granted; hence he grows up anticipating as certainty the fact that nothing he is taught will remain the same, that no institution is eternal, and that even his most basic concepts will have to be continuously questioned and revised. Times have changed, and theories of education have necessarily changed too. It has increasingly come to be recognized that an education is not a *thing* to be acquired, and that students' minds are not empty buckets to be filled or blank pages on which teachers and parents inscribe notes neatly. The day of the fanatic school administrators frantically determined upon "keeping students like neat ducks all in a row" is over.[28] Education is now more generally viewed as a *process* in which students must learn to participate; their minds serve as tools which they will continue to use in what will be a life-long process of re-education.

The majority opinion in *Tinker* reflects this view of education. Students are guaranteed a right to self expression on controversial political issues[29] so long as the orderly process of education is not impaired. The emphasis throughout the opinion is on the fact that no disturbances or disorders occurred. The challenge, and the responsibility, are placed where they belong—on the secondary school students themselves.

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[27] Keniston's nomenclature for the same phenomenon is the "historical speed-up." Paper delivered at the Sixth Annual Arthur P. Noyes Memorial Conference, Philadelphia, October 11, 1969.

[28] Comment, A Student's Right to Govern His Personal Appearance, 17 J. of Public Law 151 (1968).

[29] We are not here concerned with non-constitutionally protected expression or deportment, such as short skirts, long hair, hot lunches, or cool music.

"Correlative" First Amendment Rights of the Totality of Secondary School Students

Although it has been suggested that "Too little attention has been given to defining the purposes which the first amendment protection is designed to achieve and to identifying the addressee of that protection,"[30] there is in fact a long history of judicial recognition that the First Amendment has a two-fold purpose, that it is intended as much for the benefit of the listeners as for the speaker.

The dual purpose of the First Amendment was clearly described by Justice Brandeis, in *Whitney v. California.*[31] From the speaker's point of view, he saw free expression as related to respect for public order:

> that it is hazardous to discourage thought, hope and imagination: . . . fear breeds repression; . . . repression breeds hate; . . . hate menaces stable government; . . . the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies. . . .

In more recent times, it has been pointed out that sit-ins and demonstrations are a kind of communication by default.

> . . . as critics of protest are eager and in a sense correct to say, the prayer-singing student demonstration is the prelude to Watts. But the difficulty with this criticism is that it wishes to throttle protest rather than to recognize that protest has taken these forms because it has had nowhere else to go.[32]

The importance of this correlative public right to information and to exposure to a variety of views was reiterated by Justice Murphy in *Thornhill v. Alabama:*[33]

> . . . Freedom of discussion, if it would fulfill the historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

and by Justice Douglas in *Dennis v. United States:*[34]

> . . . Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart.

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[30] Barron, Access to the Press—A New First Amendment Right, 80 Harv. L. Rev. 1641, 1648 (1967).

[31] 274 U.S. 357, 375 (1927).

[32] *Supra* n. 30, at 1647. Professor Barron is discussing the failure of the communications media to make itself adequately available to minority groups. The point is equally valid applied to students subject to unduly repressive regulations controlling free exchange of opinion.

[33] 310 U.S. 88, 102 (1940).

[34] 341 U.S. 494, 584 (1951) (dissenting opinion).

Perhaps the fullest expression of this "other-side-of-the-coin" right of the majority is found in an encomium to Justice Black, written by the late Professor Cahn: [35]

> . . . The chief enemies of republican freedom are mental sloth, conformity, bigotry, superstitution, credulity, monopoly in the market of ideas, and utter, benighted ignorance. Relying as it does on the consent of the governed, *representative government cannot succeed unless the community receives enough information to grasp public issues and make sensible decisions.* As lights which may have been enough for the past do not meet the needs of the present, so present lights will not suffice for the more extensive and complex problems of the future. *Heretofore public enlightenment may have been only a manifest desideratum; today it constitutes an imperative necessity.* The First Amendment . . . "reflects the faith that a good society is not static but advancing, and that the fullest possible interchange of ideas and beliefs is essential to attainment of this goal." [36]
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> . . . What higher *public* interest is there than enlightenment of the electors, and what higher *social* interest than the intellectual advancement of the community? *Not alone the speaker, missionary, writer or printer, has a stake in the First Amendment: the whole conglomerate mass of the community audience is involved. Including those who are almost sure they will never wish to speak and those who are completely sure they do not wish to listen.* Under Black's doctrine, no one is required to listen, but even a unanimous unwillingness to listen does not justify repression, for an advancing society must be free to revise its judgement on this score as well as on others. The audience has the indefinitely continuing right to be exposed to an ideological variety: it will not be heard at any one period of time to renounce exercising the right in other, future periods. (Emphasis supplied.)

In the same vein, writing for the majority in *Marsh v. Alabama,*[37] (holding that a Jehovah's witness could not be criminally punished for distributing religious literature on the streets of a company-owned town despite a sign saying "Private property—no solicitation") Justice Black based his opinion *not* on the First Amendment right of the speaker, but squarely on the correlative right of the listeners:

> Many people in the United States live in company towns. These people, just as residents of municipalities, are free citizens of their state and country. Just as all other citizens they must make decisions which affect the welfare of the community and nation. To act

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[35] Cahn, The Firstness of the First Amendment, Chapter II, the Bill of Rights and the Judges, from Confronting Injustice—the Edmond Cahn Reader, at 86-104, 102-103 (Little Brown 1966). Also published in 65 Yale L. J. 464 (1956).

[36] Justice Black dissenting in Feldman v. United States, 322 U.S. 487, 501 (1944).

[37] 326 U.S. 501 (1946). *See also* Black's opinion in Tucker v. Texas, 326 U.S. 517 (1946) and dissenting opinions in Beauharnais v. Illinois, 343 U.S. 250, 268-270, 274-275 (1952); Breard v. Alexandria, 341 U.S. 622, 650 (1951); Dennis v. United States, 341 U.S. 494, 580 (1951).

> as good citizens they must be informed. In order to enable them to be properly informed their information must be uncensored.[38]

This opinion is in striking contrast to Black's dissent in *Tinker*. What might have been the education of the inhabitants of the Alabama company town-high school, or perhaps eighth grade? Could their distaste for the particular religious literature have been less great than the distaste of the majority of Des Moines High School students for black armbands, or of Shaw High School students for buttons of one kind or another? In *Marsh,* Justice Black was concerned about keeping the avenues of communication open, even to those who did not at the moment choose to listen. It may be wondered what the Justice's response in *Tinker,* might have been, had an archaic theory of education not been paramount.

Conclusion

The *Guzick* case, on appeal, raises important questions. Certainly not least important is the right of the other students to listen, and the obligation to learn to live without violence with the "multitude of tongues." When can that lesson be learned, if not now?

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[38] Marsh v. Alabama, 326 U.S. 501, 508 (1946).