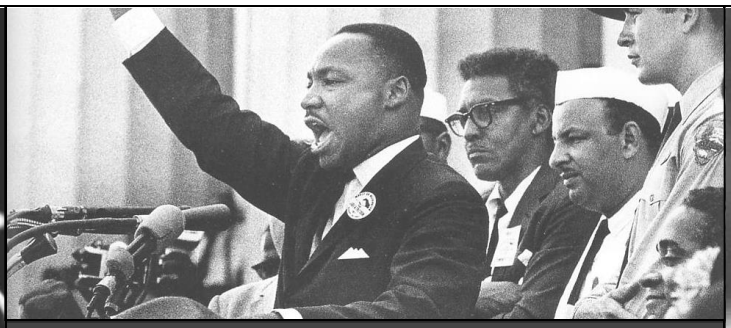
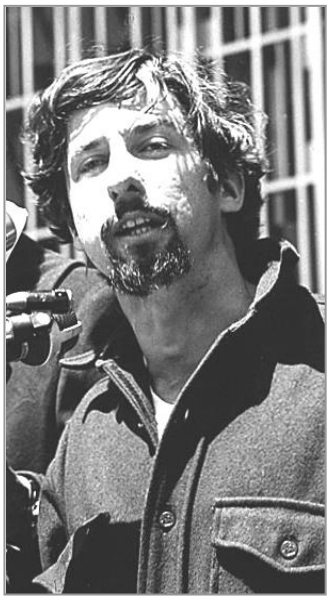


DR. HARTNELL'S

Supreme Court & Teenagers

Introduction:

Political movements during the 1960s called for social change in the U.S. Each movement (e.g. Civil Rights Movement, Student Movement, etc.) changed government policy and how almost every American lives today. Young people played a big role in these movements. Numbers alone made them important. More than 76 million babies were born during the post-World War II "baby boom". In particular, college campuses teemed with young people who had the freedom to question the moral and spiritual health of the nation. Composed mainly of white college students, the Student Movement worked to fight racism and poverty, increase student rights, and (later) to end the Vietnam War (1964-1973). In 1960, the Students for a Democratic Society (SDS) was formed and adopted *The Port Huron Statement*. Written by student leader Tom Hayden (born 1939) [pictured right], this manifesto pushed the idea that *all* Americans, not just a small elite, should decide major economic, political, and social issues. By 1968, 100,000 young people had joined the SDS.

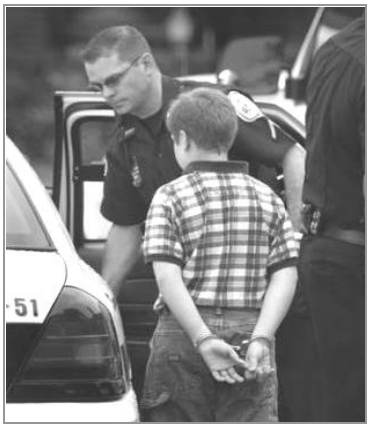


Times have changed. The mass student movements of the past are no more. The teenagers from those movements have matured into adults, and, sadly, some now pass stifling legislation against the very people they once were. Even though the demonstrations on campuses have slowed, occasional flair ups show that the spirit of the 1960s-era movements remains. Today, a debate rages over whether teenagers have the same rights as adults. The answer is not always yes, and the Supreme Court has said that in certain instances teenagers *can* be treated differently.

A Brief History of the Court System & Teens:

For the first 100 years of this country's existence, young offenders were treated like adults by the courts. During the reform-oriented Progressive Era, most states established juvenile court systems and training schools intended to rehabilitate delinquent minors. A court that heard cases involving juvenile offenders exclusively could be found in most major U.S. cities by the early 20th Century. The Progressive reformers attempted to instill a basic compassion in the justice system through these special courts. The system viewed the young offender more as a "wayward child" than as a potential criminal, while the juvenile court itself (utilizing a concept of law called *parens patriae*) functioned essentially as a surrogate parent. Proceedings were civil rather than criminal, and their intent was to protect and correct, rather than to punish or destroy.

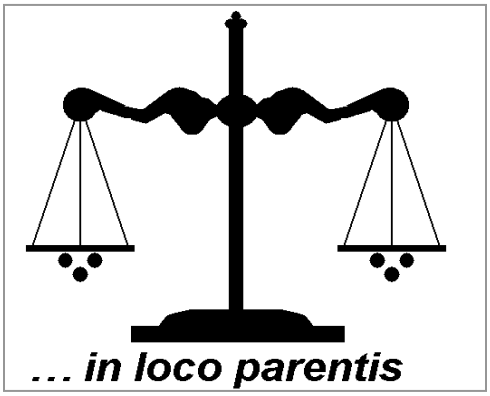
Court Cases Affecting the Procedural Protections of Teenagers:



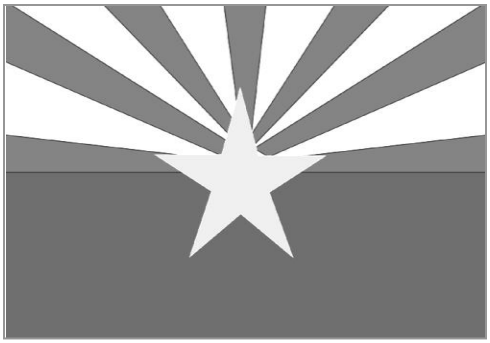
Rights of Minors – The *Gault* Case:

On June 8, 1964, a woman in Gila County, Arizona named Mrs. Cook called the county sheriff after having received an obscene phone call. When a sheriff's officer came to her home and took her statement, Mrs. Cook accused Gerald Gault, a 15-year-old neighborhood boy, of having made the call. Young Gault had a bad reputation and was serving probation for a prior offense. Officer Flagg went to the Gault home, placed Gerald in custody, and took him to the juvenile detention center. The sheriff's department failed to notify Gerald's parents that their son had been taken into custody. Gerald's mother eventually got word of a hearing for her son scheduled for the following afternoon at the juvenile detention center. She attended the hearing, where Officer Flagg recounted Mrs. Cook's accusation. He said Gerald spoke "lewd" comments into the telephone, asking Mrs. Cook such questions as: *"Do you give any?"*, *"Are your cherries ripe today?"*, and *"Do you have big bombers?"* Mrs. Cook herself was not present, nor was any record made of the proceedings. No one was sworn in before giving testimony, Gerald had no attorney with him, and he had not been advised of his rights. The judge decided that Gerald was "involved" in the offense and ordered him detained.

A week later, Gerald appeared at a dispositional hearing to determine what should be done with him. Again, no record was kept, nor was Gerald informed of his right to remain silent or of his right to legal counsel. Neither he nor his parents were informed of the exact charges against him. During the hearing, Gerald said he dialed Mrs. Cool's phone number, but that he handed the phone to Ronald Lewis, his friend, who then *"did the talking"*. The hearing judge found Gerald to be a *"child in need of supervision"* and assigned him to the Arizona Youth Industrial School until he reached the age of 21. While a person 18 years of age or older would have faced a maximum penalty of a $50.00 fine and jail term of two months, Gerald was sentenced to reform school for six years. (The reason for this large discrepancy was that in 1964, judges were allowed to act *"in loco parentis"* or in place of parents. They could use their own judgment as to innocence or guilt without regard to due process, the right of confrontation and cross-examination, the privileges against self-incrimination, and the right to a transcript to the proceedings. Teenagers were not protected by the Constitution in this case in the same way as adults would have been protected.)



According to Arizona state law, for the protection of the child, juvenile proceedings were confidential and not subject to review. Thus, Gerald had no right to an appeal, but his parents' lawyer filed a petition of *habeas corpus* arguing that their son had been denied his rights under due process. The case eventually reached the Arizona Supreme Court and centered on the Fourteenth Amendment and the due process rights of minors under the law. The Court was asked, *"Do juveniles facing criminal charges have the same protections under the Constitution as adults?"* and *"Was the state's effort to protect juveniles an unconstitutional infringement on their rights?"*



The Arizona Supreme Court agreed with the initial decision in the *Gault* case saying that the adult and juvenile court systems had different aims and the latter should not be subject to strict adult regulations. Gerald, they said, had not been treated differently from other juveniles, therefore, the decision to confine him was upheld. Unconvinced, the Gault's attorney appealed to the U.S. Supreme Court. In May 1967, the Court ruled 8-1 that the Fourteenth Amendment applies to juveniles. Juvenile offenders have the right to know the charges against them, to have a lawyer represent them, and to confront witnesses. They must also be told of their right not to testify against themselves. This revolutionized juvenile justice.

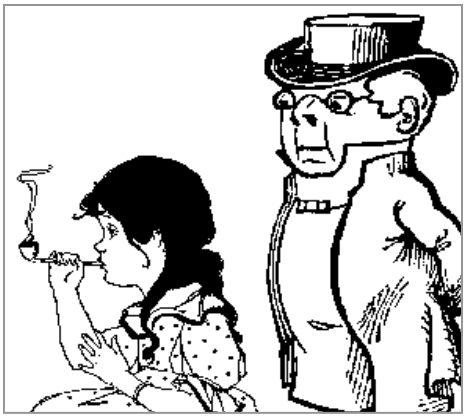
The one dissenting opinion came from Justice Potter Stewart. His belief was that juvenile proceedings are not criminal trials and that the objective of the juvenile court is to correct a condition, not to convict and punish a criminal (purpose of a criminal court). As for Gerald Gault [pictured right, many years later, with Amelia Lewis, the ACLU lawyer who represented him all the way to the Supreme Court] when he looking back on his juvenile case, he commented, *"Without a lawyer, I had no idea what was happening to me in court until the judge said I was committed 'until I was twenty-one'. I realized then that was more years than I could count on the fingers of one hand."*

Student Suspensions – *Goss* v. *Lopez*:

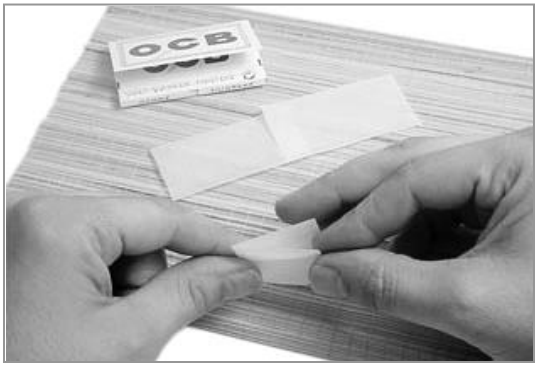
The case of *Goss* v. *Lopez* stemmed from race related student riots at Central High School in Columbus, Ohio [pictured right] in 1971. (The Center of Science and Industry, or "COSI", now occupies the building, which closed as a school in 1982.) The principal suspended 75 students for racial disruptions in the lunchroom and damaging school property. One student, Dwight Lopez, insisted he was innocent. He did not, however, get a hearing to tell his side of the story. Along with eight other students, they brought their case to court. A Federal court agreed with the students that they had a right to a hearing. School officials appealed. Finally, on January 2, 1975, the court affirmed the decision of the three judge panel by a 5-4 vote saying that under the Fourteenth Amendment, *"people cannot be denied liberty without due process"*. Lawyers for the school district had argued that there is no constitutional right to education, so due process does not protect against suspensions. They would further say that due process only applies if a student suffered a "severe loss". The loss of 10 school days (Lopez's punishment) was not, in their eyes, "severe".

The Supreme Court disagreed. *Goss* v. *Lopez* presents a very basic question dealing with the management of the school. *"Are schools like a family model where problems are resolved in the way that a family resolves problems or are schools more like the bureaucratic model followed in society?"* In the family model, the principal would usually act as the father in resolving problems. Such ideas, however, were now a thing of the past. Granting students hearings before suspensions further changed the history of school government. Writing for the dissent in this case, Justice Lewis Powell stated, *"Discipline did not represent harm but was itself an integral part of education. It is no less important than learning to read and write."*

Students Searches – *New Jersey* v. *T.L.O.*:



In Piscataway High School in 1980, a teacher discovered a 14-year-old freshman and her friend smoking cigarettes in the school lavatory in violation of a school rule. He took them to the office where they met with the vice principal. Her friend admitted to breaking the rule, but T.L.O. (her name's abbreviation), denied that she had been smoking. When she said she did not smoke at all, the vice principal demanded to see her purse. Upon opening it, he found a pack of cigarettes but also noticed a package of cigarette rolling papers associated with the use of marijuana. He then proceeded to search thoroughly and found some marijuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed her money, and two letters that implicated her in marijuana dealing. The juvenile court held that the Fourth Amendment applied to illegal searches by school officials but that the search in question was a reasonable one. The Superior Court of New Jersey agreed with the juvenile court.



But, when the case got to the New Jersey Supreme Court, it reversed the decision and ordered the suppression of the evidence found in the purse, holding that the search of the purse was "unreasonable". School children, the court said, have legitimate expectations of privacy. The school appealed to the U.S. Supreme Court and the case was decided on January 15, 1985. The lawyers for the school argued that teachers must be permitted to keep discipline, and this includes searching students' lockers and purses. T.L.O. and her lawyers argued that the search violated the Fourth Amendment's ban against unreasonable searches and seizures.

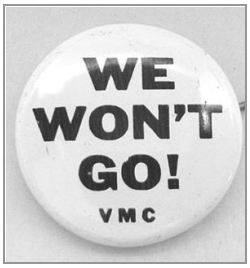
By a 6-3 vote, the Supreme Court decided that while the Fourth Amendment does protect students against unreasonable searches, teachers do not need "probable cause" to think that a crime has been committed in order to conduct a search. They said schoolchildren *do* have legitimate expectations of privacy, and that they may find it necessary to carry with them a variety of legitimate, non-contraband items. There is also no reason to conclude that students have necessarily waived all rights to privacy in such items by bringing them onto school grounds. However, striking the balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances, the search of a student by a school official *will* be justified at its inception where there are "reasonable grounds" for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, sex, and the nature of the infraction. The Court ruled that the search of T.L.O.'s purse was not unreasonable for Fourth Amendment purposes. First, the initial search for cigarettes was reasonable. The report to the vice principal that T.L.O. had been smoking warranted a reasonable suspicion that she had cigarettes in her purse, and thus the search was justified despite the fact that the cigarettes, if found, would constitute "mere evidence" of a violation of the no-smoking rule. Second, the discovery of the rolling papers then gave rise to a reasonable suspicion that T.L.O. was carrying marijuana as well as cigarettes in her purse. This suspicion justified the further exploration that turned up more evidence of drug-related activities.

To summarize, in normal, adult cases, police must *suspect* that a crime has been committed. This is not true in schools. School officials need only to have "reasonable grounds" that there has been a violation of school rules to search a student, their possessions, or their locker. A *random* search of a student, their possessions, or lockers, however, is not permissible, even if the school does post a notice or include such a statement in its handbook that lockers *are* subject to such searches. As for a "dog sniff" of school lockers, this does not constitute a search that could be prevented by the Fourth Amendment. However, if a dog alerts to a specific locker, the search of that locker is not a random search because the dog's actions have provided the school principal with a *reasonable suspicion* that the locker contains contraband, and that the student who occupies that locker has violated a criminal law.

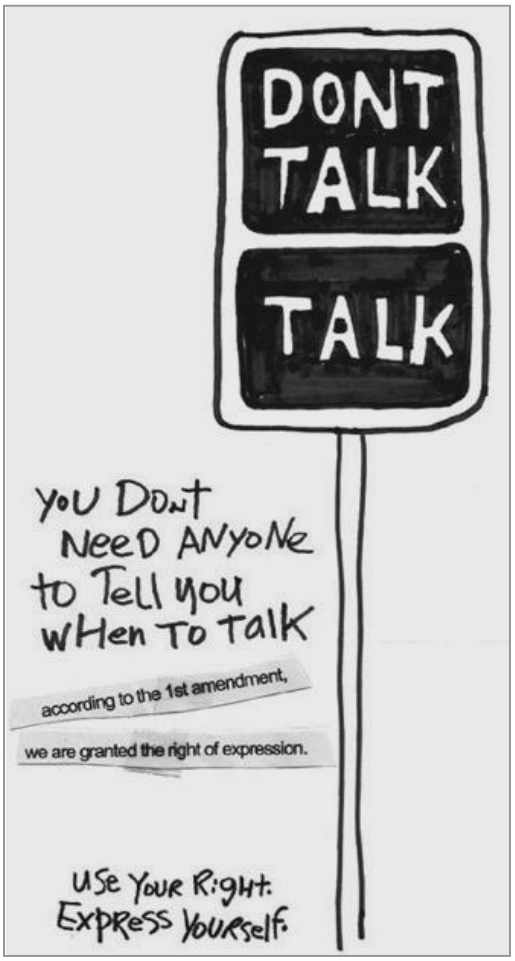
Justice William Brennan wrote for the dissent and said that, *"It would be incongruous and futile to charge teachers with the task of imbibing their students with an understanding of our system of constitutional democracy, while at the same time immunizing those same teachers from the need to respect constitutional protections."*

Free Speech – *Tinker v. Des Moines School District*:

In 1965, the Vietnam War was a very emotional issue and school officials feared disturbances. When a school in Iowa learned that two students, John Tinker (15) and Christopher Eckardt (16), planned to wear black armbands to protest the war, they warned the students that they would be asked to remove them. If they refused, they would be sent home until they returned without the armbands. All of the Tinker children [pictured right] and Eckardt wore the armbands. All were suspended.



The Tinker children went to court to protest their suspensions. Their lawyer argued that school officials had violated their First Amendment rights to freedom of speech. A local judge dismissed the case. Two years later, in 1967, the case reached the U.S. Supreme Court. The lawyers for the Des Moines School District argued that schools were not the place for displays of free speech. They said they needed to keep order in schools and that anti-war protests could cause fights. On February 24, 1968, the Court ruled 7-2 that First Amendment applies to students because students, in school as well as out, are "persons" protected by the Constitution. Neither students nor teachers, it declared, *"Shed their constitutional freedom of speech or expression at the schoolhouse gate."* The Court continued, *"We do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised or ordained discussion in a classroom."*

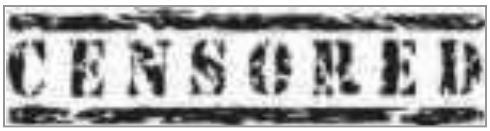


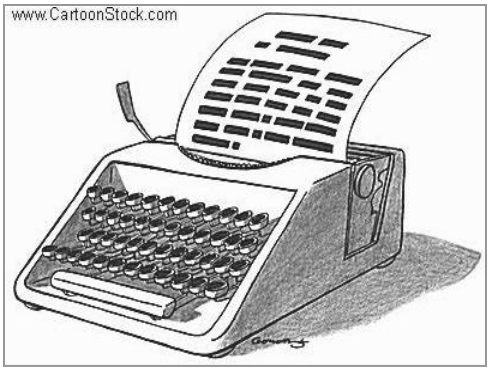
Justice Potter Stewart, while concurring with the majority said privately that he did not share the court's *"uncritical assumption that the First Amendment rights of children are co-extensive with those of adults"*. He said, *"A child, like someone in a captive audience, is not possessed with that full capacity for individual choice which is the presupposition of First Amendment guarantees."* In the dissent opinion, Justice Hugo Black pointed out that while he believed in the First and Fourteenth Amendments, he does not believe, *"that any person has a right to give speeches where he pleases and when he pleases"*. The Vietnam issue is *"highly emotional and may disrupt the learning process"*. Justice Hugo Black also commented, *"School discipline, like parental discipline, is an integral and important part of training our students to be good citizens – to be better citizens."*

Student Censorship – *Hazelwood* v. *Kuhlmeier*

As in the case of *Tinker* v. *Des Moines* discussed previously, the *Hazelwood* v. *Kuhlmeier* case dealt with the First Amendment rights of students to free expression. The controversy began in the spring of 1983 when Robert E. Reynolds, the principal of Hazelwood East High School, refused to permit the publication of two articles in the *Spectrum*, a school newspaper produced by students in a journalism class. Principal Reynolds said he deleted the two articles dealing with divorce and teenage pregnancy because they described families and students in such a way that even though their names were not mentioned it was *"clear the articles were going to tread on the rights of privacy of students and their parents"*. School officials further said that the newspaper was an extension of classroom instruction and did not enjoy First Amendment protection.

A district court judge agreed with the school board's lawyer who said that schools would be in trouble if people could change curriculum at the drop of a lawsuit. A court of appeals disagreed, however, and by a 2-1 decision, overturned the judge's decision saying the Hazelwood's *Spectrum* was, in fact, a *"public forum"*. The case finally reached the U.S. Supreme Court where, on January 13, 1988, it ruled 5-3 that school officials have broad power to censor school newspapers, plays, and other *"school-sponsored expressive activities"*. The Supreme Court's ruling on this decision was not without strong dissent. In addition, several experts, organizations, and related court cases make it unclear exactly what rights to expression students do or do not have.





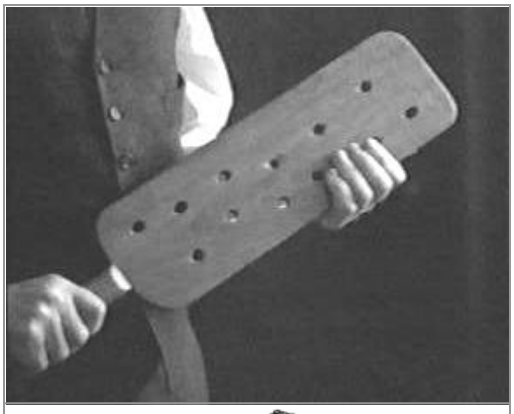
Library Censorship – *Board of Education v. Pico*:

In September of 1975, a politically conservative organization complained about several books found in school libraries. In February of 1976, acting on this list, nine books were removed from the school library for study by the school board. A committee of parents and teachers was also formed to look at the books. The committee recommended that five of the books be retained, but the school board rejected the committee's report and only allowed one book returned to the library without restriction. Five students, including Steven Pico, brought suit with their parents and lawyers to have the books returned to the library. They claimed the school board's actions denied them their rights under the First Amendment.

A district court judge upheld the school board's right to remove the books. The judge felt that the courts *"should not intervene in the daily operations of school systems"* unless *"basic constitutional values"* were violated. Since the books were removed based on a conservative educational philosophy and not on religious principles, the court felt it was not a constitutional violation. While the court did say removal of the books may reflect a misguided philosophy, it was not a direct infringement of any First Amendment rights.

An appeals court reversed the decision and the U.S. Supreme Court upheld this reversal on June 25, 1982. Justice William Brennan in writing the majority opinion stated that, *"Access to ideas makes it possible for citizens to exercise free speech and press in a meaningful manner. Students need access to ideas to help prepare them for effective participation in society."* The Court said that the library *"has characteristics that make it appropriate for the First Amendment"*.

Court Cases Affecting the Disciplinary Rules for Teenagers:



Corporal Punishment – *Ingraham v. Wright*:

In 1970, an eighth-grader in Dade County, Florida named James Ingraham was sent to the office for not answering his teacher fast enough. He was given 20 whacks with a wooden paddle for the offense. Mrs. Ingraham's lawyer filed charges against the school in Federal court arguing that the punishment was too severe and against the Eighth Amendment's ban on cruel and unusual punishment. However, the Federal court judge disagreed with Mrs. Ingraham, so she and her lawyer appealed to the U.S. Supreme Court. On April 19, 1977, the Court upheld the lower court decision that school could use physical punishment by a 5-4 majority. It said that, unlike prisons, schools are open institutions and while parents may protest mistreatment, the schools could use corporal punishment. In addition, a hearing prior to the punishment was not necessary.

It is especially interesting, for example, that in *Ingraham* v. *Wright*, Justice Potter Stewart agreed with the majority in upholding corporal punishment in schools. The decision, as mentioned, also said no hearing was necessary before the corporal punishment was administered. Yet, in the case of *Goss* v. *Lopez*, Justice Stewart agreed with the majority in saying the students must be guaranteed a hearing before being suspended even for a short time. Both decisions have had a major role in influencing schools throughout the U.S., and yet, they were decided by the narrowest of margins.

But the Ingraham decision did not foreclose a successful challenge to corporal punishment under the U.S. Constitution. Several Federal appellate courts have recognized that excessive corporal punishment can impair public school students' Fourteenth Amendment substantive Due Process protections against arbitrary and unreasonable government action if the punishment shocks the conscience. This standard was met where a coach knocked a student's eye out of its socket with a metal lock and where a teacher restrained a student until he lost consciousness and fell to the floor. Yet, students must satisfy a very high standard to substantiate that corporal punishment violates the Fourteenth Amendment, and most claims have not been successful.

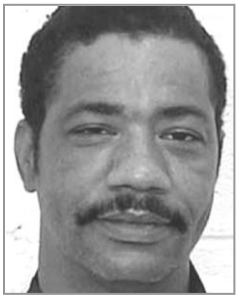
A MAINE SCHOOLMARM SPANKS A YOUNG MAN WHO WOULD NOT OBEY THE RULES

Students who are injured by teachers can always bring criminal or civil assault and battery suits, which might result in fines and/or imprisonment for the teachers or monetary awards for the victims. Where corporal punishment is banned by state law, school board policy, or even action of a local school council, teachers can be dismissed for insubordination if they repeatedly disregard such prohibitions. And in schools that allow corporal punishment, educators are not required to use it. Teachers who elect to corporally punish students should be certain their actions are reasonable and preferably witnessed by another adult. There is mounting criticism of corporal punishment, and more than 40 organizations, including the American Bar Association, the American Psychological Association, and the National Education Association, have gone on record opposing the use of corporal punishment in schools. Although this discipline strategy is still widely used in U.S. schools, there has been a steady decline in incidents since the mid-1970s. *(So, what about Dr. Hartnell's push-up/sit-up policy for tardy students?...)*

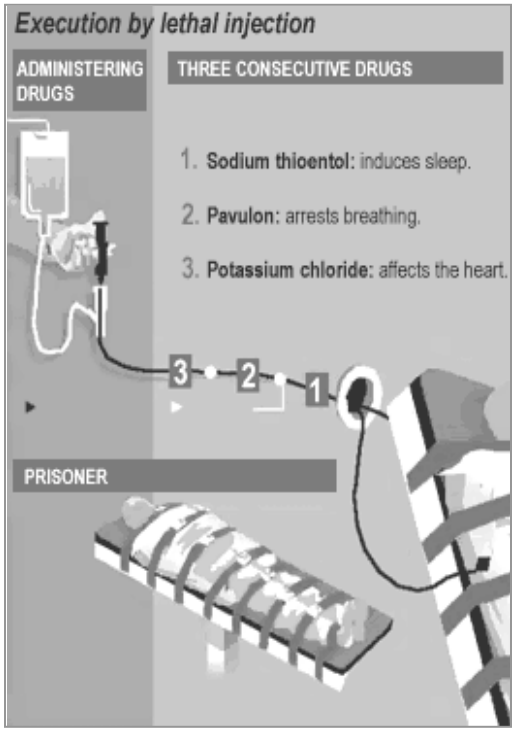
Death Penalty for Juveniles – *High* v. *Zant*:

On July 26, 1976, José High, Nathan Brown, and Judson Ruffin robbed a service station near Crawfordville, Georgia. After taking money from the cash register, they forced the operator of the station, Henry Lee Phillips, to get in the trunk of their car and put his 11-year-old stepson, Bonnie Bulloch, in the back seat. The three men drove Phillips and Bulloch to a remote area. Phillips was released from the trunk and ordered to lie on the ground. Bonnie was then shot in the head, and Phillips shot in the head and wrist. Phillips miraculously survived and was later able to identify High, Ruffin, and Brown. High was arrested in Richmond County on other charges and later confessed to the murder.

All three were sentenced to death, but the convictions against Brown and Ruffin were overturned on a legal issue on appeal. They subsequently pled guilty in return for life sentences. High, just a few weeks short of his 18th birthday, however, was convicted by a jury in the Superior Court of Georgia for murder, two counts of kidnapping with bodily injury, armed robbery, possession of a firearm, and aggravated assault. During the trial, High showed no remorse for the killing, but rather bragged that he *"wanted to be the most famous black ringleader in the world"*. On December 1, 1978, High was sentenced to death by electric chair.



High next filed a *habeas corpus* petition in the Superior Court, which was denied on September 10, 1982. The Georgia Supreme Court and the U.S. Supreme Court both denied High's request for a rehearing. High [pictured left, top] was executed by lethal injection on November 6, 2001. *(Just a month before his execution, the Georgia Supreme Court declared the electric chair to be cruel and unusual punishment, requiring the state to switch to lethal injection. However, this "more humane way to die" was botched from the start as it took prison guards almost 40 minutes to start the IV that would kill High, a procedure that usually takes five minutes. Emergency medical technicians were unable to find a usable vein in Jose's arm and abandoned their efforts after 15-20 minutes. In violation of the ethical code of the American Medical Association, a physician was called in to find a useable vein. Soon, one needle was stuck in High's hand and a second was inserted in his neck. High was conscious during all of this, and prison officials turned off the microphone so witnesses could not hear his screams. In the end, the procedure took an hour and nine minutes instead of the usual 10.)*



While the Supreme Court has gone back-and-forth on this issue since the *High* v. *Zant* case, on March 1, 2005, it released its latest opinion. As part of the *Roper* v. *Simmons* case, the Court said the Eighth and Fourteenth Amendments forbid the execution of offenders under the age of 18 when their crimes are committed. Until this ruling, states that allowed the death penalty could have imposed it on killers who were 16 or 17. (In 1987, the Supreme Court ruled in ***Thompson* v. *Oklahoma*** that a death sentence could not be imposed on anyone 15 or younger.) Christopher Simmons, who was 17 at the time of a murder-robbery in 1993, had his death sentence overturned by the Missouri Supreme Court in 2004, saying the execution of anyone under 18 was cruel and unusual.

Missouri appealed to the U.S. Supreme Court asking the law be upheld. In a 5-4 decision, the Court agreed with the Missouri Supreme Court. Justice Anthony Kennedy, writing for the majority stated, *"When a juvenile offender commits a heinous crime, the state can exact forfeiture of some of the most basic liberties, but the state cannot extinguish his life and his potential to attain a mature understanding of his own humanity."* The Court reaffirmed the necessity of referring to *"the evolving standards of decency that mark the progress of a maturing society"* to determine which punishments are so disproportionate as to be cruel and unusual. The Court reasoned that the rejection of the juvenile death penalty in the majority of states, the infrequent use of the punishment even where it remains on the books, and the consistent trend toward abolition of the juvenile death penalty demonstrated a national consensus against the practice. The Court determined that today, society views juvenile killers as categorically less culpable than the average criminal[1].

[1] The material for this review of *Supreme Court & Teenagers* was selected and organized by Dr. Hartnell for educational purposes only. The text consists of entire sections from the book *Developing Constitutional Rights of, In and For Children* by Robert Burt. Because Dr. Hartnell's *Pathways Through History* contains copyrighted material, it is strictly meant for use in the classroom. Under no circumstances is it to be published and/or sold for a profit. Doing so is in direct violation of the Copyright Law of the United States *(Title XVII, Chapter V, Sections 501-513)* and hereby relieves Dr. Hartnell of any responsibilities and all gratuities owed to outside publishers, illustrators, and their respective corporations.