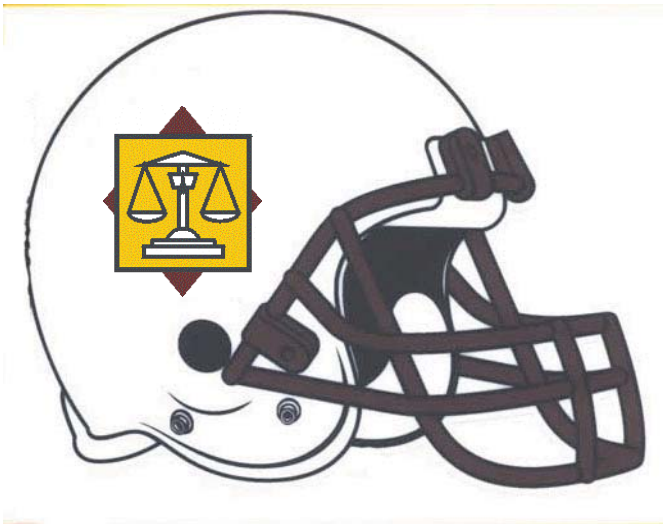
Wyoming High School Mock Trial
2009

Williams, Hamilton & McGee v. Eaton
(10-17-69)



Written by Don Morris with the support of:
The Wyoming Partnership for Civic Education
The Laramie County Community College Partnership/Diploma Program
The Wyoming High School Mock Trial Program

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Preface

My motivation for developing the mock trial on the "Black 14 Incident" came from attending a November 2008 teacher workshop on the subject that was developed by Richard Kean, the Coordinator of the Wyoming Partnership for Civic Education at the American Heritage Center at the University of Wyoming. This workshop featured several outstanding speakers on a topic rich with US Constitutional implications and therefore great for student learning. A presentation by Jacob Zumo, who as a student at Cheyenne McCormick Junior High had won first prize in the 2008 National History Day Competition, particularly piqued my interest. In addition, a CD on the Black 14 that had been developed by teachers at a similar UW workshop in August 2007 presented wonderful background information on the subject. Included in that CD was a moot court lesson developed by Sheridan High social studies teacher Tyson Emborg that I also found very helpful.

The six affidavits and two letters presented in this case are based on court records, memoirs, news articles and personal interviews. Each affidavit/letter was reviewed for accuracy and tone by either a participant in the event or someone close to the participant. The reviewers were:

For the Plaintiffs
Charles E. Graves reviewed his letter exhibit.
Mel Hamilton reviewed his affidavit.
Tony McGee reviewed his affidavit.
Joe Williams reviewed his affidavit.

For the Defendants
Attorney General James E. Barrett reviwed his letter exhibit. His son, Richard Barrett, also reviewed the letter.
Head Coach Lloyd Eaton's affadivit was reviewed by Paul Roach, who was Eaton's offensive backfield coach in 1969.
Gov. Stan Hathaway's affidavit was reviewed by Jack Speight of Cheyenne, who was the governor's chief of staff in 1969.
University of Wyoming President William Carlson's affidavit was reviewed by his wife and son, Beverly and Earl Carlson.

I've taken the liberty of placing this mock trial on the evening of October 17, 1969, the date of the actual "Black 14" hearing before the Board of Trustees of the University of Wyoming. It was the day before the football game against Brigham Young University.

I'd like to thank the following people who provided valuable input on this project: Judge Roberta Coates, Richard Barrett, Gloria Edwards, Richard Kean, Pat Hacker, Marguerite Herman, Mike Morris, Lew Roney, Ian Shaw, Margaret Shaw, Tim Summers, and Robert Swaim.

I also deeply appreciated the willingness of the following people to share their personal experiences relating to the Black 14 Incident with me: James Barrett, Beverley, Mary and Earl Carlson, Mel Hamilton, Charles Graves, Burt Gustofson, Jim and Anita Kean, Tony McGee, Kevin McKinney, Larry Nels, Paul Roach, Ian Shaw, Jack Speight, Robert Swaim, Tom Tucker and JW Williams.

I hope that by participating in this exercise, high school students will not only develop better critical thinking, writing, and cooperative learning skills, but also a greater understanding and appreciation of the law and legal careers as well.

Don Morris
September 2009

Prologue

"The Black football players are off the team!" "I heard they quit." "No, Coach Eaton just threw them off." Like the canon fired after each Wyoming touchdown at War Memorial Stadium, the news of the Black 14 Incident roared across the campus of the University of Wyoming in Laramie, as students gathered in small groups on Friday, October 16, 1968, to contemplate what seemed inconceivable a few days ago: a divided football team and a traumatized campus.

Background to the Black 14 Incident

The social climate in the United States during 1969 was one of turmoil and volatile uncertainty. Despite President Nixon's pledge to end the conflict, the Vietnam War raged on. Deployed American troop levels there reached 550,000, and anti-war protests were held on college campuses and in city streets. Turbulence also surfaced in the struggle for civil rights. Based upon the non-violent teachings of the Rev. Martin Luther King Jr. and Mohandas Gandhi, the Civil Rights Movement had won monumental victories with the passage of the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965, and The Equal Housing Act of 1968. However, this era of social progress was not without serious conflict, as many urban areas, depleted of jobs and government services, saw riots erupt in the 1960s in the minority areas of Los Angeles, Newark, and Detroit, and other cities. After the April 1968 assassination of Dr. King, violent protests exploded in dozens of cities throughout the United States, including the nation's capital, Washington, D.C.

The furor over civil rights and the Vietnam War reached many college campuses. Major outbreaks of violence occurred at well-known institutions, including Columbia University in 1968 and Cornell and Yale Universities in 1969, as students demanded the elimination of university research and ROTC programs which were perceived as supporting the U.S. government's policies in Vietnam.

In addition, the concept of "Black Power," a movement emphasizing African culture and a more aggressive approach in dealing with the "white" establishment, began to gather greater following in minority communities throughout the country. Black activism on college campuses increased dramatically. Protests by black students concerning racially-discriminatory practices by universities took place at several colleges during the late 1960s. One of the most iconic instances of a demonstration about civil rights occurred during a medal ceremony at the 1968 Olympics in Mexico City, when two black American athletes, Tommie Smith and John Carlos, raised "black-glove fisted " salutes in protest of racist policies in the United States. In 1969, black students at several Western universities turned their attention toward racial policies of the Church of Jesus Christ of Latter Day Saints, focusing specifically on the LDS practice of not allowing blacks to become priests or marry within the church. Black athletes demonstrated that year against this policy at the University of Texas at El Paso, University of New Mexico, University of Washington and San Jose State University.

Even Wyoming, predominantly rural, politically conservative, primarily Caucasian in its makeup, and considered well outside of the urban mainstream, did not escape the furor of the 1960s. Anti-war demonstrations were held peacefully on the previously-quiet campus of the University of Wyoming in 1968 and 1969 and in the fall semester of 1969. After the establishment of the Black Student Alliance on campus, civil rights and exclusionary policies of the LDS church to prohibit blacks from marrying and becoming priests within the church, became the center of attention for UW's contingent of black athletes.

Statement of Facts

During the late 1960s, the Black Student Alliance, comprised of minority students, was formed on the University of Wyoming campus. In the fall of 1969, the organization, led by UW graduate student Willie Black began to focus attention on discriminatory policies of the Church of Jesus Christ of Latter Day Saints (LDS) toward African Americans.

The Alliance composed a letter on Tuesday, October 14, 1969, criticizing the practices of the LDS church and calling on Wyoming's black football players to take part in a symbolic protest of these church practices by wearing "black armbands" during the University of Wyoming-Brigham Young University football game scheduled on Saturday, October 18. BYU, a Western Athletic Conference rival, is in Provo, Utah, and is owned by the LDS Church.

The UW football team was 4-0 at this point in the season, and the anticipation surrounding the game was high. The Alliance letter was delivered later that week to UW President William Carlson, the athletic director, the UW Board of Trustees, commissioner of the Western Athletic Conference and the president of the LDS Church. Fourteen black UW football players, wearing street clothes with black armbands, met with UW Head Football Coach Lloyd Eaton on Friday, October 17, and it was at that meeting, which took place in the bleachers at the UW field house, that Coach Eaton removed them from the football team and revoked the students' scholarships.

This mock trial is set to take place the night before the BYU contest as an evidentiary hearing before the Board of Trustees of the University of Wyoming. It asks the Board of Trustees to decide the following questions:

1) Under the First Amendment of the United States Constitution and Article 1 Sections 20 and 21 of the Wyoming Constitution, do student athletes have the right to peacefully protest without the threat of losing their athletic scholarships if the aforementioned protest is in conflict with the team rules established by the head football coach? If so, does the termination of the athletic scholarships of the 14 UW black football players by UW Head Football Coach Lloyd Eaton stand? Or, instead, should the scholarships be reinstated and the players allowed back on the football team?

2) Is the removal of the players from the team and revocation of their scholarships justified because the player participation in a protest directed at the religious policies of a church would violate the "establishment clause" of the First Amendment to the U.S. Constitution and Article 1 Section 18 and Article 21 Section 25 of the Wyoming Constitution?

Stipulations

1) This mock trial, *Williams et al v. Eaton*, takes place on Friday night, October 17, 1969, the day before the UW-BYU football game, as an evidentiary hearing before the Board of Trustees of the University of Wyoming.

2) Although this case will be presented to the Board of Trustees of the University of Wyoming, it will proceed as a contested case hearing. Consequently, the hearing will be conducted like a trial and will follow the mock trial rules of procedure and evidence.

3) All affidavits/letters are considered genuine and signed by the persons deposed.

4) In October 1969, practices of the Church of Jesus Christ of Latter Day Saints included prohibitions against black people marrying within the LDS church and black people becoming priests of the LDS church.*

5) The information contained in the section "Background to the Black 14 Incident" in this packet can be introduced through the witnesses.

6) The information contained in the "Epilogue" section cannot be used in this trial.

7) Any information developed through personal research, including all sources listed in the "Bibliography," cannot be used at trial.

8) The "Why We Protest" document is an authenticated copy of the statement that was written and published by the UW Black Student Alliance in the fall of 1969.

9) The 'Black Armband' photos and contained in the "Exhibit" section are accurate depictions of the armbands worn by members of the "Black 14" on the morning of October 17, 1969.

10) The two U.S. Supreme Court cases contained in this mock trial packet: the selection from Everson v. Board of Education, 330 U.S. 1 (1947) and Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) are authentic.

11) All witnesses in this case may be played by students of either gender. However, because the problem is based on a historical event, all witnesses will be addressed as males.

* These practices were eliminated from the LDS church in June of 1978.

Plaintiff: Affidavit of Mel Hamilton

I, Mel Hamilton, having been first duly sworn upon my oath, depose, and state as follows:

1. My name is Mel Hamilton. I was born in 1947, and grew up in Boy's Town, Nebraska. I am a physical education major and play guard on the UW football team. I currently live in Crane Hall here on campus.

2. The reason I came to the University of Wyoming in 1965 was UW Offensive Backfield Coach Paul Roach. He came to Omaha when I was a senior and explained both the football program and the academic program at the university to me. His offer seemed like a good deal. I would get my tuition, room, board, and books paid for if I came to UW and played football – which I loved. For someone who wanted to become a P.E. teacher and a coach, Laramie seemed to be a good place to go.

3. Things seemed to go pretty well my first two years on campus. I went to my classes and played football for UW, but I was more of an observer than a participant on the campus social scene. Things changed dramatically when I met a woman named Kathy, who is white. We got along so well, then fell in love and decided to get married. However, when I told Coach Eaton about our plans, he told me that he was against my marriage to a white girl. He said it was not right. His attitude upset me quite a bit. So, I left the football team and joined the US Army.

4. Ultimately, Kathy and I did not get married. However, when I finished my commitment with the army last year, I wanted to go back to Laramie and finish my degree and, if possible, play football. I went over to speak with Coach Eaton. We didn't talk about what happened two years ago. Basically, Coach Eaton said "welcome back" and was fine with me rejoining the team. He gave me back my scholarship, and at that time I deeply appreciated him having me back.

5. Certainly the assassination of Dr. King last year increased my awareness of the bigoted ideas shared by many Americans, but I became far more aware of civil rights issues after I joined the Black Student Alliance here at UW this fall. It was Willie Black, a graduate student in math who heads up the Alliance, who introduced us to the racist ideology of the LDS church. The ideas that black people cannot become priests nor marry within the Mormon Church are particularly offensive to us. We have met every week this fall. We had great discussions among ourselves and learned quite a lot about what has happened to black people in this country. The upcoming BYU game and the Vietnam Moratorium Day held this past Wednesday gave us an opportunity to take a stand. Our group has been aware of other protests by black students against these church policies, particularly at San Jose State. This week we published our position on the LDS Church policies and mailed or hand delivered to several people, including President Carlson, Athletic Director Red Jacoby, Coach Eaton, and the UW newspaper, *The Branding Iron*.

6. I feel that these LDS policies are clearly humiliating toward black people. And it seems that no one here in authority is particularly concerned about it. Now, we all work ferociously hard under Coach Eaton, and during games we leave our heart and souls out on the field for the UW Cowboys. UW benefits greatly from our efforts. We are undefeated and the stands are full. We help bring a lot of money back into UW. So, more than 100 years after the Emancipation Proclamation I just want this university to

acknowledge the demeaning nature of those beliefs. In short, all we are asking is for the right to protest these LDS policies by simply wearing a black armband on our team uniform when we play BYU.

7. Coach Eaton is a great football coach, one hell of a coach. There's no doubt about his knowledge and passion for the game. We're undefeated! But there is more than football to a college education, and he just doesn't get it. We have rights. He doesn't seem to believe that. Furthermore, UW students belonging to other organizations on campus can protest the Vietnam War without losing their scholarships.

8. This morning we tried to meet with Coach Eaton and explain our position. We just wanted to talk with him. Out of respect, we came to him in street clothes wearing black armbands. We thought we could feel him out and explain our side of things. We wanted to show him that our intentions were entirely peaceful. Nothing was set in stone. But before we could even say anything, he launched into a tirade, calling us rabble rousers and saying we could all go back on Negro relief. He told us we had broken the team rules. Frankly, I don't remember him ever talking to us about the rules, and there is nothing in writing that he gave us. Eaton was just as rigid to us today as he was when I told him about Kathy and myself two years ago. Nothing has changed with him. Then, he kicked us off the team and said we no longer had our scholarships. I think the whole meeting lasted 15 to 20 minutes, and none of us could get a word in edgewise.

9. After that we went over to the Student Union, where we heard rumors that we quit the team! Nothing could be further from the truth. We were kicked off the team by Coach Eaton.

10. President Carlson called us over to his office around 11:30 AM. We talked with him for several hours, explaining our feelings about those offensive LDS policies. The meeting did not go well. Carlson, unlike Eaton, did let us speak our minds. However, he really didn't seem very sympathetic to us. He seems more concerned about the university being put in a bad light than recognizing the legitimacy of our position. Indeed, he even wanted us to go back and apologize to Coach Eaton. Then maybe we could get back on the team. Now, there is no way we need to apologize to anyone for trying to exercise our constitutional rights against a racist policy.

Plaintiff: Affidavit of Anthony McGee

I, Tony McGee, having been first duly sworn upon my oath, depose and state as follows:

1. My name is Tony McGee. I'm a student here at the University of Wyoming. I'm 20 years old and live in McIntyre Hall on campus. I'm a physical education major and I play defensive end on the Cowboy football team.

2. I grew up in Michigan and went to Battle Creek Central High School, where I also played football. We had a very successful program there and were 33-0 during the period I was on the team. A lot of colleges recruited me, and several offered me full scholarships. Originally, I was headed to the University of Nebraska on a scholarship. But after talking with UW Coach Fritz Schurmur, who also offered me a full football scholarship and encouraged me to visit the campus in Laramie, I decided to go to Wyoming.

3. Life at UW, initially, was difficult for me. I was a long way from home. The culture was very different – there were very few black students, and I initially didn't play much football. However, my sophomore year, I began to get into the games a lot more. Also, the university administration began to recruit more black people and other minorities on campus, so the social situation began to change for me for the better. Consequently, by my junior year, I was feeling pretty good about being here. Getting a good education has always been important to me. I enjoy my classes here and I'm currently maintaining a B average.

4. During this recent period of fighting for civil rights and with the recruitment of more black students to UW, the minority group the Black Student Alliance was formed on campus to discuss issues that were relevant to us. It is led by grad student Willie Black. This group consists of many more students than just the black football players, and many different opinions are being expressed about what's going on.

5. The past couple of weeks the group became focused on the inequitable policies of the Mormon Church toward black people. We've always had problems with the way the BYU players treated us in previous games. Sometimes they cheap-shotted us and some of those guys yelled the "N" word at us. The coaches and refs didn't do anything, so we just played harder. By the way, at other universities, such as San Jose State, there had been student athlete protests against these church policies. So based on current LDS policies and what we had run into doing BYU football games, the Black Student Alliance, on their own, came out with a series of demands and sent them to different university officials this week. One of these demands was for the football players to wear black armbands during the BYU game tomorrow.

6. But the thing that you must remember is that the black football players as a group hadn't decided what we would do this Saturday. So last night, Thursday, after practice, we met as a group to decide what actions we should take. What we agreed on was to visit Coach Eaton, wearing these armbands, and explain our feelings about both the treatment we had received during BYU games and the current LDS policies to him. Basically, we were mostly concerned about the poor treatment by BYU players that we had received during previous games against them. So, we wanted to express our feelings about that treatment to Coach Eaton, feel him out about it, and then make a decision.

7. This morning we all met as a group, put on these armbands, and walked over to Coach Eaton's office. His words surprised us, to say the least. Coach Eaton first told us to move over to the field house. Then when we got there he told us we could save ourselves a lot of trouble, because we were "no longer Wyoming Cowboys" and were off the team. We just couldn't get a word in edgewise. Eaton told us to "shut up." He then made these comments about us "going back on welfare" or "colored relief," as he called it. He said that if we didn't understand that, we could "all go back home and get on Negro relief." It was very humiliating to us. We all worked very hard for him and had been in good academic standing at UW. And Eaton says this to us in a very public place.

8. Then later, around 11 a.m., we went over to meet with President Carlson and Athletic Director Jacoby for several hours about what happened. President Carlson let us speak our minds, but he didn't seem very supportive of our situation. He wanted us to go back and individually talk to Eaton about being reinstated on the team, as if we had done something wrong. After being treated the way Coach Eaton treated us as a group, there is no way I would go back over there at that time alone.

9. President Carlson asked us about the coach's rules. I know Coach Eaton did have training rules, like no staying out late the night before a game and stuff like that. And he does have requirements about hair length and moustaches. Sometimes in response to some issue on campus he would tell us during practice something like "it's not Cowboy football to demonstrate." He said it in a very general way. And I do not recall hearing nor have I seen anything specifically from him about a "no protest" rule or a "no faction" rule.

10. We know Coach Eaton is a disciplinarian. He and the other coaches push us hard. And we have been successful. We are 4-0 so far this season, and personally I have 11 sacks already this year. We like being Wyoming football players and we are proud of what the team has accomplished. So, when we as a group went to speak to Coach Eaton this morning, it was not to protest, but to explain to him about our thought processes and get his reaction before we ultimately decided what to do. Now we all believe that our treatment on the field was discrimination pure and simple. We wanted Coach Eaton to understand our feelings about the matter. But he just didn't listen to us, and immediately kicked us off the team before we could get a word in edgewise. Frankly, no one in authority here seems sympathetic to our ideas and our basic rights as human beings. President Carlson talked to us about following rules. He should talk to Coach Eaton about following the rules of common decency.

Plaintiff: Affidavit of Joe H. Williams

I, Joe H. Williams, having been first duly sworn upon my oath, depose and state as follows:

1. My full name is Joe Harold Williams. I reside in McIntyre Hall here on the UW campus, where I'm a senior majoring in education. I'm also one of the tri-captains of the UW football team, along with Larry Nels and Tommy Tucker.

2. I was born in Center, Texas, on March 30, 1947, but I grew up in Lufkin, Texas, where I was a star football player for Dunbar High School Tigers. The University of Wyoming was one of several universities that requested game film from my high school to evaluate my athletic ability. After reviewing game film, I was contacted by Coach Bill Baker and was told that UW would offer me a scholarship, which I accepted in 1965.

3. My experience in Laramie, Wyoming, has been excellent until this incident. We have an excellent football team, and we are currently undefeated and leading the Western Athletic Conference (WAC). It was our goal to win the WAC, and get a major bowl bid at the end of the football season. Through the years, I have received a solid education at the university, and I am on target to graduate with a degree in education. I hope to be drafted by one of the professional teams in the National Football League.

4. A graduate student by the name of Willie Black established the Black Student Alliance on the campus of UW. Given the mood of the country in the mid-sixties over establishing civil rights for all individuals, the assassination of Dr. Martin Luther King, Jr., and the treatment of Blacks by authorities in this country, I found the Black Student Alliance to be very beneficial to anyone who believed in equal rights. The UW Black Student Alliance provided information about civil rights and the racist policies that existed on campuses within our conference and the country. In our conference, The Western Athletic Conference, is Brigham Young University (BYU), which is owned by the Church of Jesus Christ of Latter Day Saints (LDS). The racist policies and practices of the LDS Church are no secret throughout the WAC. When we played BYU at their campus, we could not stay in Provo, Utah, where the university is located, because no hotel would accommodate any team with black athletes. So black and white athletes had to stay in Salt Lake City, Utah, and the team had to take a bus to Provo from Salt Lake City to play BYU on game day. Because of racist practices like these, and the LDS church practices of forbidding blacks to become priests and marry within the church, schools across the WAC began to protest when they played BYU. With the date of the BYU game approaching, we believed it was our turn to speak out, and we, the 14 black athletes decided to protest their racist policies in a non-violent way.

5. Our protest would be in the form of wearing black armbands during the BYU game, as a way of showing our disgust with the LDS policies. Before wearing the black armbands as a protest, we wanted to explain the reasons for our actions to our Head Coach Eaton. We knew there would be some controversy, and as one of the tri-captains of the UW football team, I felt we should explain our feelings to him first.

6. So, the morning before the game, all 14 black athletes went to Lloyd Eaton's office as a group. While we were in the hallway of Eaton's office, he came out and told us that he would meet with us in the field house, not the football team meeting room inside the field house where team meetings usually took place. As soon as we were all seated in the bleachers, I began to explain to Eaton what we were planning

to do to express our feelings concerning BYU racist policies as it relates to blacks. Eaton launched into this tirade about us being ungrateful, and telling us we could all just go on "Negro relief." He then said we all could just go play for Negro schools. As Eaton continued his tirade, we started to respond to his comment about "Negro relief." Our comments in response to his tirade seemed to upset him even more. His attitude and comments turned everyone completely off. Finally, he said we were "off the team," and would lose our scholarships, and this meeting was over. We were stunned by what Eaton said and how he treated us. We were all good students and athletes and had worked hard to make UW number one in the Western Athletic Conference.

7. After leaving the meeting with Eaton in the field house, we all went to the Student Union. Stories began to leak out immediately that "we quit the team" or had been kicked off. It was reported that Eaton had told us we had broken rules about forming factions and protesting. For the record, neither Eaton, nor anyone from his staff or university administration had ever talked to the football team, black or white about any rules concerning forming factions and protesting during the years I was a player on the team, nor was there anything in writing that had been given to us. Once or twice, in response to some current issue on campus, Eaton would tell us "that it's not Cowboy football to demonstrate." However, he would use that phase with any illustration he wanted to point out. Eaton would sometime say it was "not Cowboy football" to quit when we were behind in a football game or "not Cowboy football" to skip class or be a bad students, etc. But he never phrased any of this in the form of a rule. It was only after yesterday's practice that he spoke to me about the statement from the Black Student Alliance and stated that "the only demonstrating that we will do is on the football field, and there will be no black arm bands worn on the field." It was last night after practice that the 14 of us got together to figure out what to do.

8. While we were in the Student Union, we received a message from UW President Carlson that he wanted to meet with us. We met with President Carlson for approximately two hours. He listened to what we had to say and our reasons for wanting to voice a protest over the LDS policies as it related to BYU football team. However, he did not say or do anything during the course of the meeting. I do not believe President Carlson has any idea of the tremendous change the country is undergoing as it relates to civil rights. There are many on the campus of UW, both professors and students, who agree with our right to protest and not lose our rights or scholarships. President Carlson and Eaton did not allow us to exercise our constitutional rights. My fellow teammates and I - the Black 14 - have taken a stand on behalf of our rights as citizens of this country, just as other students in the WAC have done when they played the BYU football team this season. As citizens of this country, we are willing to risk everything for what we believe.

Defense: Affidavit of Dr. William D. Carlson

I, Dr. William D. Carlson, having been first duly sworn upon my oath, depose and state as follows:

1. My name is William D. Carlson. I am the President of the University of Wyoming in Laramie, and I am 41 years old. I live in the President's house on Ivinson in Laramie. I grew up in Ft. Collins, Colorado, and went to college and graduate school at Colorado State University. After completing vet school at CSU, I attended the University of Colorado Medical School in Denver, where I received a PhD in Radiology. I served as Chairman of the Department of Radiological Health Sciences back at CSU in the early 1960s, and I was President of the Colorado State Research Foundation. While teaching at CSU, I chaired the university's Biological Science Task Force. This committee made recommendations that has helped CSU restructure itself into a major center of science research.

2. I became President of the University of Wyoming in 1968. This is a fine school. Academics are vitally important. Of course, this is the area where I built my reputation at CSU. But, to a large extent, so are athletics. I believe Coach Eaton's efforts over the last eight years have added a great deal to the spirit of the UW campus and have resulted in tremendous support for our institution from a broad spectrum people across the state.

3. This has been a very hectic week for me. The situation with the players has happened so fast. I first found out about the potential for a protest by black athletes late yesterday, Thursday, October 16 when my office received a message, a statement, sent to us by the Black Student Alliance, a group of minority students that was formed last semester and led by a graduate student, Willie Black. Of, course, I've been pretty tied down with university affairs. I had just returned from a meeting in Denver and didn't have time to meet with anyone right then. But I did call over to Governor Hathaway's office for advice on the legalities of the students' demands. That is why Wyoming Attorney General Barret has written his letter.

4. Then just this morning around 10 a.m. I learned of the dismissal of the 14 black players by Coach Eaton in a telephone call from the UW Athletic Director Red Jacoby. He informed me that the Wyoming football staff had just dismissed the players from the team. I and Red Jacoby immediately met with Coach Eaton and his staff for about an hour. We discussed his reasoning for the action. Coach Eaton told me that the possibility for reinstatement of the players might happen if they met with him on an individual basis but not as a group.

5. Around 11:30 a.m. I met with the 14 black players. Joe Williams, one of the players, and Willie Black, Chancellor of the Black Student Alliance, acted as spokesmen for the group. All these students were wearing black armbands, and every one had a chance to speak. The students believed that their dismissal from the team was unfair and explained why. I informed them that based on the meeting with the coaching staff Coach Eaton would meet with them individually to discuss reinstatement to the team but not as a group. I then requested that representatives of the 14 players meet with Red Jacoby and me in Mr. Jacoby's office. Once again the students stated their position against the actions of Coach Eaton, and complained bitterly about the policies of the LDS church. This meeting lasted until 4 or 5 p.m., but nothing was resolved.

6. I am in support the basic actions of Coach Eaton to prevent football players from wearing black armbands during the BYU game. As a department head, he does have the authority to make certain rules to ensure the effectiveness of his program. I have the authority to overturn those rules. However, given the gravity of this situation, I believe the Wyoming Board of Trustees is the best venue to ultimately decide these issues. Perhaps some compromise can be reached where the students can protest individually. I do believe in freedom of speech and assembly, but it is clear that in this case that Coach Eaton told the students several times about the protest rule and its consequences. If we don't support Eaton and his staff about this action, team discipline will suffer. Not only that, but every administrative rule that has been designed to ensure the safety of students on this campus will be placed in jeopardy.

7. In addition, I believe that if the players wear armbands on their football uniforms while playing BYU, it will look like both UW and the state are sanctioning this protest against the Mormon Church. I believe this action would violate the "establishment clause" of the First Amendment by putting both UW and Wyoming in the position of taking a position against a particular church doctrine.

8. It's quite obvious that looking at the country as a whole today, we have had a break down. Disregard for the law is becoming the norm on many college campuses and in our nation's city streets. We've see major riots take place in both areas. I am afraid that outside agitators will come to Laramie and cause significant disruption. Wyoming cannot be a part of that. Frankly, I'm saddened by the whole affair. Ultimately, I believe with a situation of this magnitude, such as the removal of students from the team and the loss the athletic scholarships, the Board of Trustees is the proper venue for making a final decision. And, that is why I've asked this meeting to be called.

Defense: Affidavit of Lloyd Eaton

I, Lloyd Eaton, having been first duly sworn upon my oath depose and state as follows:

1. My name is Lloyd Eaton. I am the head football coach at the University of Wyoming and have been so since 1962. I am 50 years old and live in the coach's house on Ivinson Street in Laramie.

2. I was born in South Dakota and grew up in Belle Fourche. I attended Black Hills State Teachers College, in Spearfish, where I was captain of the football team. This was during the depression and things were tight for everyone. Students were no exception. We didn't have the kind of scholarships for athletes available at the college then that kids have today – you know tuition, room, board, books and tutoring. I worked my way through school by sweeping the floors of the college buildings for 25 cents per hour. I worked hard, kept my nose to the grindstone, and graduated.

3. I also began my coaching career Black Hills State, where I assisted as line coach for one year after my graduation. Then, I coached at DuPre High for several years until I joined the army to fight in World War II. Following the war, I came back to South Dakota to coach at Bennett County High in Martin, South Dakota. I then went to the University of Michigan to earn a Master's degree. While there I also coached the Wolverine 150 pound football team. Eventually, I went to the University of Indiana to earn my doctorate in education, but before I completed that, I was hired to be the head football coach at Alma College in Michigan. I feel I was pretty successful at Alma. The Scots were 40-20-2 under me, and we won two MIAA championship titles in 1950 and 1951. I left Alma in 1956 to coach at Northern Michigan for a year.

4. My break into big-time college football came in 1957, when I was hired by Wyoming Head Coach Bob Devaney to be defensive line coach. My coaching philosophy then was the same it is today. Coaches and players work ferociously hard. You pay attention to the smallest detail and see if you can gain an advantage over the opposing team. You mold players to work as a unit – like a smooth functioning machine, all parts working together toward a common goal. This is something that was driven into me when I was a captain in the U.S. Army fighting in Europe during WWII. Following procedures and working as team is absolutely essential in battle. So today I believe that even the players who have great talent but who think primarily of themselves cannot achieve the same success as a bunch of hardworking athletes who working together as team.

5. When Bob Devaney left for the head coaching job at the University of Nebraska in 1962, I became Head Football Coach for the UW Cowboys. I'd say my coaching philosophy works. We've done real well. We're undefeated so far this year. And my overall record at UW is 54-20-2. Wyoming has won the past three Western Athletic Conference titles. Also, we won the Sun Bowl in 1966 and went to the Sugar Bowl in 1967.

6. I have "no protest" and "no faction" rules for all my players. They cannot participate in any protest. And, they cannot form specific factions within the team. Both rules are there to maintain team unity. And any player will be kicked off the team if he violates them. I tell them about these rules at the beginning of spring practice, and again when we come together in August. This is the same for any of my rules. A rule is a rule, and you just can't break it without consequences. In fact, I spoke to Joe Williams about

them yesterday after practice. Furthermore, if students are out of class protesting, then they're not in class learning. Look, our society is being divided by these protests. These demonstrations just destroy team unity and discipline and ultimately hurt both the football program and the kids.

7. So when the black football players came to me today with their armbands on, I saw this as a clear violation of the team rules that I had clearly established. Heck, I even warned the team about the consequences of breaking these rules this week. The players just left me with no alternative. Their actions were going to divide my team. I told them to save their speeches. Yeah, I did make a statement in the meeting about them "going on Negro relief," but I meant no harm by it. I was mad. These guys deliberately violated my rules. Now they were no longer Wyoming football players. What about the players who did follow the rules? Wearing the armbands was a clear slap in the face to them, to my coaches, and to me. The 14 players are off the team plain and simple. And, if these guys can't follow the rules, I'll just find kids who will.

8. I never used racist terms against these 14 players. I talked to them straight and treated them the same way I would treat any player who deliberately violated my rules. You bet I'm angry at what happened. I recruited these kids, most coming from poor circumstances, and gave them full scholarships at a major university, doing something they love – playing big time football - and this is how I'm repaid.

9. When President Carlson called me this morning, I immediately went to his office with my coaching staff. We talked for about an hour. I told him, for the sake of UW, I'd be willing to make some concessions. However, my position about wearing armbands during tomorrow's BYU game is absolute. On that part, I'll make no changes. But if the 14 come to me as individuals, not as a group or faction, I told Dr. Carlson I'd be willing to re-evaluate some things. However, I will not be bullied by a 'mob' mentality.

Defense: Affidavit of Stanley K. Hathaway

I, Stanley K. Hathaway, having been first duly sworn upon my oath depose and state as follows:

1. My name is Stanley K. Hathaway. I am the current Governor of the state of Wyoming. I am 45 years old and live in the Governor's mansion on 21st Street in Cheyenne. I was born in Osceola, Nebraska. My mother, Velma, died when I was 2 years old and I was adopted by Franklin and Velma Hathaway from Wyoming. I grew up and went to school in Goshen County and graduated from Huntley High. After graduation I attended the University of Wyoming, but WW II interrupted my education there. I enlisted in the U.S. Army Air Corps where I participated in many missions flying over Nazi occupied Europe. After the war ended, I attended the University of Nebraska, where I received a Bachelor's degree in 1948 and a law degree in 1950.

2. I then headed back to Wyoming, where I established a law practice in Torrington. Beginning in 1954, I served eight years as prosecuting attorney for Goshen County. In both private and public practice I handled a lot of different kinds of cases, obviously including many dealing with aspects of both the Wyoming and U.S. Constitutions.

3. During the 1950s, I also became very interested in politics and served as chairman of the Wyoming Republican Party 962-64. In 1966, I ran for governor and was elected. I began my term in January 1967.

4. I believe education in very important to the future of this state. In the most recent legislative session I fought hard for a severance tax to help the public school system of this state and signed a bill to that effect into law. I also strongly believe that the University of Wyoming is not only integral to the overall system of education here but to the future prosperity of this state. UW is the only four-year institution of higher learning we have, and its stability, academic credibility, growth, and support by its citizens are absolutely vital to the future of Wyoming.

5. So Thursday, when I received word of the demands of the Black Student Alliance from President Carlson, I became deeply concerned for a number of reasons. Many universities in this country have recently been beset by demonstrations that have completely disrupted the educational process there. Buildings have been occupied and classes have been canceled. The learning process for students was shut down. In some cases, outsiders played major roles in closing campuses. We've also seen many riots in cities across the country during the past several years. I won't have that happen here. I have an obligation as Governor to insure the safety and well being of the citizens of this state, and that includes the students and faculty at UW.

6. The decision by the 14 black players to wear black armbands as a symbol of protest against Brigham Young and Mormon religion tomorrow troubles me deeply. I am opposed to a demonstration against anyone's religion by anyone representing the University of Wyoming. I am further opposed to the use of a university facility, such as the football field, which is tax supported by citizens of Wyoming, to protest LDS religious beliefs. If that were to happen, it would place this university and the state in the position of deliberately working against the LDS church. We would basically be violating the establishment

clause of the First Amendment. Also, we have many Mormon residents of this state who would feel that any such action would be a direct slap in the face to their religious beliefs.

7. I have known Coach Lloyd Eaton for several years and feel he is an honorable person. If he says he did something, he did it. If he says he will do something, he will do it. He has been extremely successful with his coaching endeavors. I know he is a believer in strong discipline, and I feel that concept is necessary when you're coaching, especially in these times.

8. I believe that when the 14 black players came to him earlier today wearing black armbands that they were engaging in a form of demonstration and this directly violated Coach Eaton's rule prohibiting players from demonstrating. Consequently, if we don't support his position, as I said before, the university and the state will be placed in the position of deliberately working against the LDS Church - a clear violation of the Establishment Clause. Finally, outsiders will then be more likely to target our state for disruption, and as governor I cannot tolerate this.

Appendix

United States Constitution

First Amendment

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.

Wyoming Constitution

Article 1, Section 20. Freedom of speech and press; libel; truth a defense.

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and [for] justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

Article 1, Section 21. Right of petition and peaceable assembly.

The right of petition, and of the people peaceably to assemble to consult for the common good, and to make known their opinions, shall never be denied or abridged.

Article 1, Section18. Religious liberty.

The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Article 2, Section 25. Religious liberty.

Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

EXHIBIT A

WHY WE MUST PROTEST

The Black Students Alliance of the University of Wyoming will stage a non-violent demonstration, Saturday, October 18, outside the football stadium prior to the game with Brigham Young University.

The purpose of the demonstration is to call attention to certain practices in the Church of Jesus Christ of Latter Day Saints (LDS, commonly referred to as Mormons), which tend to demean a person solely on the basis of skin Color.

Blacks may join the church but cannot ascend to its higher offices, (Priesthood.) He cannot pass the sacraments as the 12 and 13 year old boys do. He cannot prepare the sacrament as the 14 and 15 year olds do, nor can he bless the sacrament or perform, as the 16, 17 and 18 year old boys do. In each case the reason is the same — he is Black and is hence under the curse of Cain, according to LDS Holy writ.

Our position is that a practice and interpretation clearly ra cist, is no less so because it is couched in religious terms.

OUR HUMANITY DEMANDS

1.That University Officials at Wyoming as well as other schools in the Western Athletic Conference (WAC), not use student monies and university acilities to play host to the thereby, in part, sanction those inhuman and racist policies of the Church of Jesus Christ of Latter Day Saints, (LDS).

2. That all athletic directors In WAC, out of regard for the humanity of their Black Athletes, refuse to schedule and play games with BYU o long as the LDS Church continues such policies as outlined above.

3. That all Black athletes in WAC protest in same way any contest with BYU so long as the LDS Church continues such policies.

4. That all people of good will—-whatever their color—-athletes included, protest along with their Black fellows, a policy of the LDS Church clearly racist and inhuman. The symbol of this protest is the Black armband worn during each contest with a BYU team.

EXHIBIT B

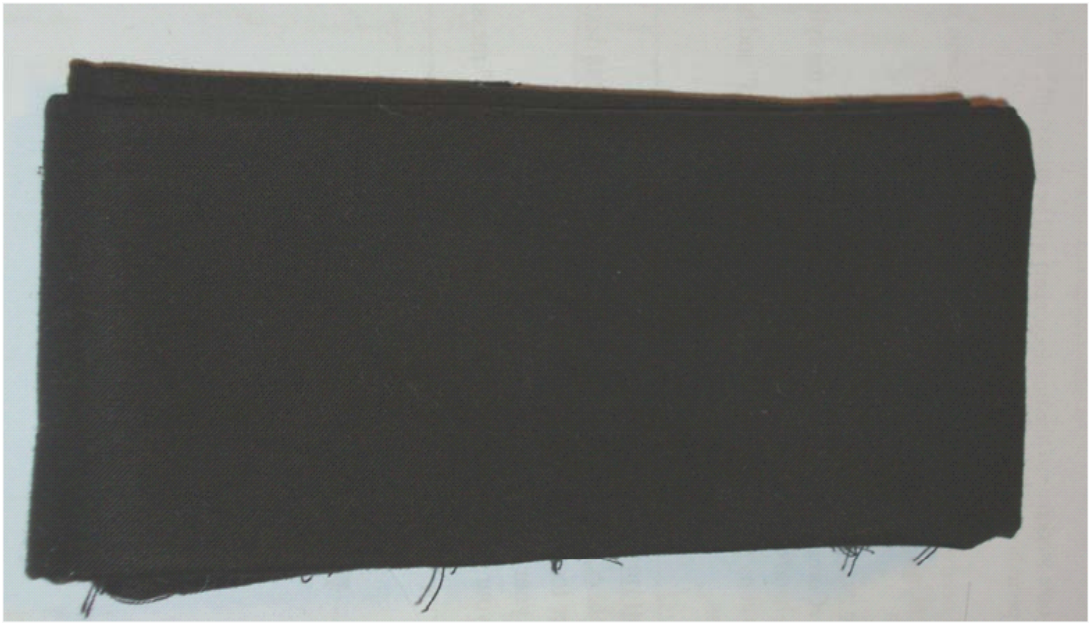

EXHIBIT C

RONCALIO, GRAVES & SMYTH
ATTORNEYS AND COUNSELORS AT LAW
527 HYNDS BUILDING,
CHEYENNE, WYOMING, 82801

October 17, 1969

C.E. Hollon
President, University of Wyoming Board of Trustees
Old Main Building,
University of Wyoming
Laramie, Wyoming

Dear Mr. Hollon:

I am writing this letter in support of 14 Black Athletes who were precipitously dismissed as members of the University of Wyoming team because they went to him this morning as a group to inquire as to they could wear black armbands in the game tomorrow against BYU. The players were dismissed for allegedly violating team rules against group protests.

In the short time since this took place, my investigation into this incident has determined there were no team rules written or verbal as to whether my clients could go together to see the coach while wearing black arm bands. Instead it is clear that Coach Eaton invented the rule when the players arrived, and dismissed them from the financial and personal benefits of scholarships only because they were there as a group—and because they were black.

The 14 athletes were wearing civilian clothes with black arm bands this morning when they appeared as a group at Coach Lloyd Eaton's office to inquire of him as to whether they could wear black arm bands when they played football against the BYU football team this coming Saturday. The reason they wanted to wear the arm bands was to protest the LDS Church's ban on blacks entering the priesthood of their church. The LDS Church owns and operates Brigham Young University.

Coach Eaton, without hearing any explanation as to why they were there, ordered the players to move from his office to the stands of the indoor arena where he immediately told them that they were suspended from the team for breaching team rules. This action was done before there was any discussion, or other dialog, between the coach and the players. Essentially, the players were dismissed from the team and lost all of their scholarship benefits because they had come to the coach in an orderly fashion and as private citizens wearing arm bands, seeking permission to wear the arm bands on the football field. All of the players are on "full ride scholarships" and if they are dismissed from the team permanently they will lose their scholarships and their ability to complete their college educations.
Certainly a football coach of a state university has no right to arbitrarily declare that players appearing before him wearing black arm bands over their civilian clothes are removed from the team, without providing due process to them. Such action will adversely affect the players' life, liberty and property.

It is also clear from the information provided by the players that there are no written team rules specifically denying the players the right to wear arm bands to a football game. None of the players to whom I've spoken earlier today is aware of any rule or edict issued by Coach Eaton preventing them from protesting any issue they were concerned with, and certainly there was no rule that prevented them from coming as a group to the Coach's office to ask permission to wear the arm bands during the football game. Eaton's policy of forbidding players to participate individually in any protest is a clear violation of the 'free speech' clause of the First Amendment to the US Constitution, and of Article 1, Section 20 of the Wyoming Constitution. The US Supreme Court decision in Tinker v. Des Moines from May of this year supports this position. In Tinker, the court held that high school students could wear black armbands to class, as long as it is not disruptive to the learning environment. Thus, Tinker and her fellow students could not be suspended from school and lose their right to an education, even briefly, for a non disruptive protest against the Viet Nam war. Similarly, the 14 UW Athletes cannot be denied their liberty and property rights because they wear black arm bands to protest the LDS Church's position regarding the admission of blacks into their priesthood.

In the case of these Wyoming football players, Coach Eaton's edict against any sort of protest at any time is clearly too broad. These students don't forfeit their right to state their ideas publicly just because they received a football scholarship from UW. If anything they are taught at the university to think and express their ideas against such injustices. Certainly if any of the Black 14 athletes, as they are now called, wants to join a protest on their own time and as a private citizen, the law allows them to do so. Indeed, their action would be in the spirit of those colonists who protested British injustice in the 1760's and 1770's by boycotting British goods. Freedom of speech is a major reason why the American Revolution was fought. Coach Eaton's action was entirely without merit because the students came to him privately, as American citizens concerned about an injustice against black people. And, without determining what their concern was, he threw them off the team, before they could say anything.

Even if Eaton had spelled out his rules about protest to these young men beforehand, and it appears clear that he did not, their removal from the team just doesn't hold constitutional water. Frankly, when speaking with some of the black players earlier today, I asked them specifically about these rules, and not one of these athletes had been notified of a "no faction/no protest rule" regarding participation as a member of the Wyoming 1969 football team.

Without regard to Coach Eaton's actions, students do not live under a dictatorship at the University of Wyoming! Clearly the U.S. Constitution and the Constitution of the State of Wyoming does not permit the University take away their property right in their athletic scholarships or their liberty right to their freedom of expression, merely because these players felt strongly enough to wear a black armband in a private meeting with their coach. Other students at UW, who are members of other student activities, have participated in demonstrations against the Vietnam War, and no one has threatened to take their scholarships away. There is definitely a double standard being applied here: one for 'black students' and the other for the rest of the University.

As far as these football players wearing armbands on their uniforms during a game...this is more complicated. Certainly, the Coach could have taken less stringent action then dismissing them from the team, and still could do so. With regard to the issue of actually wearing armbands during the game by the 14 black players, it could be perceived by some that the actions of these players would be representing the University of Wyoming. However, such actions could also be explained to the public as a protest by the black players which do not reflect the position of the university as a whole.

Under any circumstances the action taken by the Coach to immediately dismiss the players because of their appearance wearing arm bands at his office is clearly a violation of the First and Fourteenth Amendments to the Constitution of the United States, and of Article 1 Sections 20 and 21 of the Constitution of Wyoming which involves the right of free speech, and the right of petition and peaceful assembly. I believe that such dismissal, if allowed to go forward, will result in University of Wyoming athletics being labeled as discriminatory against blacks, a situation which will decimate Wyoming athletics for years to come because they will be unable to recruit black athletes.

The fact that Coach Eaton chose to dismiss the "Black 14" without delving into his reasons and apparently creating rules on the spot, causes one to wonder whether the Coach himself has treated these black athletes differently than he might have treated 14 white athletes who similarly appeared to protest. American citizens definitely have the constitutional right to protest that policy in a peaceful way. Perhaps, instead of threatening the rights of these football players, the University of Wyoming, should establish written policies which regarding protests. Such written policies would prevent any coach from acting arbitrarily or capriciously in dealing with his or her team. It would also enable athletes at the University to fully understand the extent to which they may engage in private protests without jeopardizing their team positions or their scholarships. The establishment of such policies would fully demonstrate that the University of Wyoming is fully committed to assuring that their athletes are afforded their fundamental rights as citizens to "freedom of speech" and "freedom of expression," as well as racial equality.

I strongly implore the Board of Trustees of UW to reverse this arbitrary and capricious action of Coach Lloyd Eaton, and to both reinstate the players and allow them to participate in the football game and to others throughout the season. To do anything less will in effect label the University of Wyoming, nationally, as a place where black athletes are not welcome. Such an image would have a devastating effect on the image of the University and on its athletics for years in the future. This action will give full cognizance to the rights and liberties of the players, and of all students, under both the U.S. and Wyoming Constitutions.

Respectfully submitted,

Charles E. Graves

EXHIBIT D

Office of the Attorney General

Governor
Stan Hathaway

123 State Capitol
Cheyenne, WY 82002

Attorney General
James E. Barrett

October 17, 1969

To the President of the Board of Trustees of the University of Wyoming:

As Attorney-General, I am writing this letter about the actions of Coach Lloyd Eaton for dismissing 14 football players from the team this morning.

I first became aware of the demands of the 14 black football players yesterday, Thursday, October 16 when I received a call from Governor Hathaway's office. He had been contacted by UW President Carlson yesterday for legal advice, and the Governor then contacted my office.

I believe that this primary demand of the Black 14 to wear armbands on the field to protest the policies of the Mormon Church would place the university and the state in an untenable position. An action of this kind would clearly violate the neutrality provision of the First Amendment to the US Constitution. One can look at previous cases handled by the US Supreme Court, such as Everson v. Board of Education (1947), and see that. The University of Wyoming is clearly an arm of the State of Wyoming. Football players in uniform clearly represent both UW and the state of Wyoming. Now, looking at past precedents, such as Everson, the US Supreme Court has made it perfectly clear, and I quote, "that the Establishment Clause of the First Amendment prohibits governments from: making laws establishing religion; taking action preferring one religion over another; taking action preferring religion generally as against non-belief; and exercising legislative power respecting religious beliefs or their expression." In short, based on the decisions of the US Supreme Court I believe that the state and its officials must maintain strict neutrality in the matters of religion and religious beliefs. Thus, the state and UW cannot condone, support, or permit the use of state facilities to display hostility toward any church or religion, and that clearly includes the LDS church.

I certainly am aware of the US Supreme Court's decision in *Tinker v. Des Moines School District* this past May. As I see it, in this case the high school students who were wearing armbands to protest the war in Vietnam were representing themselves, and not the position of their school or the Des Moines school district. In the case of the 14 UW football players, they have stated that they clearly want to wear the black armbands on their uniforms during the game with BYU as an organized protest against the LDS

Church. If this happens they will be putting both UW and the state Wyoming, in the eyes of those who watch the game, as being in support of the players' demands and against the Mormon Church. This action will thus violate the strict neutrality that the writers of the Bill of Rights desired from the First Amendment.

So, if the players insist on wearing the armbands on their uniforms, Coach Eaton is justified in dismissing them. However, if the players want to protest out of uniform and away from the stadium, then that might be a different story. And, his rule against any protest by a player would probably be considered too broad. As I said before, the US Supreme Court in its *Tinker* decision does allow high school students to protest the Vietnam War by wearing armbands in class, if the action is not disruptive of the educational process. But the actions of Tinker and the other students, although done in school, did not put the Des Moines school district right in the middle of a church versus state issue – which is what we've got here today. In short, to protect the neutrality of the university and the state, the 14 players should not be allowed to wear armbands on their UW jerseys during the BYU game tomorrow.

Sincerely,

James E. Barrett
Attorney General, State of Wyoming

Epilogue

At a hearing before The UW Board of Trustees on the night of October 17, 1969, the Board ruled in favor of Coach Eaton and his "no demonstration – no protest rule." The 14 students remained off the team and did not play in the BYU game or in any game for the rest of that season. The next day, the Wyoming football team defeated Brigham Young and the following week beat San Jose State, before losing the rest of its contests and finishing the season with a record of 6-4.

The following week Coach Eaton modified his rule and allowed athletes to participate in protests out of uniform and on their own time. In addition, the university allowed the 14 black players to keep their scholarships and continue their studies at UW. Those players, however, sued both UW and Coach Eaton in U.S. District Court in Cheyenne. However, at a hearing held in Cheyenne that November, Judge Ewing Kerr found for the university and Coach Eaton. The Black 14 then pursued the case to the 10th U.S. Circuit of Appeals, where the court upheld Judge Ewing's decision.

In 1970, the UW football team went 1-9 and Coach Eaton was fired. He eventually became Director of Player Personnel for the Green Bay Packers and later served as Western Regional Director for the BLESKO player rating service of the NFL. Eaton retired in the mid-1980's and moved to Idaho. He died in March 2007.

Dr. William Carlson remained President of UW until 1977. In 1980, he became CEO of St. John's Hospital in Jackson, where he became the first administrator to allow dogs in the nursing home portion of the facility. He then became Associate Administrator of the Office of Grants and Program Systems with the U.S. Department of Agriculture in Washington, D.C. Eventually, he retired, writing his memoirs, traveling, and working on the family home in Fort Collins, Colorado. He died in 2003.

Governor Stan Hathaway was re-elected governor in 1970. In 1975, he was appointed by President Ford as U.S. Secretary of the Department of Interior. In July of that year he resigned because of an illness. Hathaway then returned to Cheyenne, Wyoming, where he co-founded the law firm of Hathaway and Kunz, practicing law until his death in October 2005. The Hathaway scholarships, given to students attending Wyoming community colleges and the University of Wyoming, are named in his honor.

Mel Hamilton went on to receive his Bachelor's degree in education at the University of Wyoming in 1971. Since then, he has earned his Master's degree in Counseling Psychology from Leslie University and has worked both a teacher and administrator for the Natrona County School District No. 1 in Casper, Wyoming. He is currently the principal for "Back on Track," a district program for at-risk students, and Associate Director of Student Support and Director of Diversity for the school district. In addition, Mel Hamilton also serves as a member of both the United States Civil Rights Advisory Board for Wyoming and the State of Wyoming Parole Board.

Tony McGee left the University of Wyoming and graduated from Bishop College, Texas, in 1980. He played for 14 seasons in the NFL for the Chicago Bears, New England Patriots, and Washington Redskins. With his wife he owned and operated physical therapy clinics for 14 years. Since 1985, Tony McGee has served as both owner and analyst of a Washington, D.C., television program "Tony Mc Gee's Pro Football Plus."

Joe Williams graduated from the University of Wyoming with an education degree in 1970. He played in the NFL for the Dallas Cowboys and New Orleans Saints. He currently lives in Texas where he owns a property management business.

In June of 1978, the Church of Jesus Christ of Latter Day Saints dropped its prohibitions against black people both marrying and serving as priests within the church. Information about the current policies and practices of the LDS church is available at http://www.lds.org.

Tinker v. Des Moines Independent Community School District

No. 21
SUPREME COURT OF THE UNITED STATES
393 U.S. 503
Argued November 12, 1968
Decided February 24, 1969

Syllabus

Petitioners, three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They sought nominal damages and an injunction against a regulation that the respondents had promulgated banning the wearing of armbands. The District Court dismissed the complaint on the ground that the regulation was within the Board's power, despite the absence of any finding of substantial interference with the conduct of school activities. The Court of Appeals, sitting en banc, affirmed by an equally divided court. Held:

1. In wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. Pp. 505-506.
2. First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment. Pp. 506-507.
3. A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments. Pp. 507-514.

DISPOSITION: 383 F.2d 988, reversed and remanded. [504]

MR. JUSTICE FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired--that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under § 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld [505] the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. 258 F.Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." Burnside v. Byars, 363 F.2d 744, 749 (1966). [note 1]

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942 (1968).

I

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See West Virginia v. Barnette, 319 U.S. 624 (1943); Stromberg v. California, 283 U.S. 359 (1931). Cf. Thornhill v. Alabama, 310 U.S. 88 (1940); Edwards v. South Carolina, 372 U.S. 229 (1963); Brown v. Louisiana, 383 U.S. 131 (1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" [506] which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Cf. Cox v. Louisiana, 379 U.S. 536, 555 (1965); Adderley v. Florida, 385 U.S. 39 (1966).

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. In Meyer v. Nebraska, 262 U.S. 390 (1923), and Bartels v. Iowa, 262 U.S. 404 (1923), this Court, in opinions by Mr. Justice McReynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent. [note 2] See also Pierce v. Society of Sisters, 268 U.S. 510 [507] (1925); West Virginia v. Barnette, 319 U.S. 624 (1943); McCollum v. Board of Education, 333 U.S. 203 (1948); Wieman v. Updegraff, 344 U.S. 183, 195 (1952) (concurring opinion); Sweezy v. New Hampshire, 354 U.S. 234 (1957); Shelton v. Tucker, 364 U.S. 479, 487 (1960); Engel v. Vitale, 370 U.S. 421 (1962); Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967); Epperson v. Arkansas, ante, p. 97 (1968).

In West Virginia v. Barnette, supra, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said: "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." 319 U.S., at 637.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See Epperson v. Arkansas, supra, at 104; Meyer v. Nebraska, supra, at 402. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, [508] to hair style, or deportment. Cf. Ferrell v. Dallas Independent School District, 392 F.2d 697 (1968); Pugsley v. Sellmeyer, 158 Ark. 247, 250 S. W. 538 (1923). It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 U.S. 1 (1949); and our history says that it is this sort of hazardous freedom--this kind of openness--that is [509] the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. Burnside v. Byars, supra, at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption. [note 3] [510]

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam. [note 4] It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded. [note 5])

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol--black armbands worn to exhibit opposition to this Nation's involvement [511] in Vietnam--was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress "expressions of feelings with which they do not wish to contend." Burnside v. Byars, supra, at 749.

In Meyer v. Nebraska, supra, at 402, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:
"In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a [512] State without doing violence to both letter and spirit of the Constitution."

This principle has been repeated by this Court on numerous occasions during the intervening years. In Keyishian v. Board of Regents, 385 U.S. 589, 603, MR. JUSTICE BRENNAN, speaking for the Court, said:
"'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' Shelton v. Tucker, [364 U.S. 479,] at 487. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'"

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. [note 6] This is not only an inevitable part of the process of attending

school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on [513] the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. Burnside v. Byars, supra, at 749. But conduct by the student, in class or out of it, which for any reason--whether it stems from time, place, or type of behavior--materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. Cf. Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (C. A. 5th Cir. 1966).

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But 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 and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. Hammond [514] v. South Carolina State College, 272 F.Supp. 947 (D. C. S. C. 1967) (orderly protest meeting on state college campus); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D. C. M. D. Ala. 1967) (expulsion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

MR. JUSTICE STEWART, concurring.

Although I agree with much of what is said in the Court's opinion, and with its judgment in this case, I

[515] cannot share the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are co-extensive with those of adults. Indeed, I had thought the Court decided otherwise just last Term in Ginsberg v. New York, 390 U.S. 629. I continue to hold the view I expressed in that case: "[A] State may permissibly determine that, at least in some precisely delineated areas, a child--like someone in a captive audience--is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees." Id., at 649-650 (concurring in result). Cf. Prince v. Massachusetts, 321 U.S. 158.

MR. JUSTICE WHITE, concurring.

While I join the Court's opinion, I deem it appropriate to note, first, that the Court continues to recognize a distinction between communicating by words and communicating by acts or conduct which sufficiently impinges on some valid state interest; and, second, that I do not subscribe to everything the Court of Appeals said about free speech in its opinion in Burnside v. Byars, 363 F.2d 744, 748 (C. A. 5th Cir. 1966), a case relied upon by the Court in the matter now before us.

MR. JUSTICE BLACK, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court. [note 1] The Court brought [516] this particular case here on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school." Here the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom.

As I read the Court's opinion it relies upon the following grounds for holding unconstitutional the judgment of the Des Moines school officials and the two courts below. First, the Court concludes that the wearing of armbands is "symbolic speech" which is "akin to 'pure speech'" and therefore protected by the First and Fourteenth Amendments. Secondly, the Court decides that the public schools are an appropriate place to exercise "symbolic speech" as long as normal school functions [517] are not "unreasonably" disrupted. Finally, the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are "reasonable."

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, cf., e.g., Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949), the crucial remaining questions are whether students and teachers may use the schools

at their whim as a platform for the exercise of free speech--"symbolic" or "pure"--and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent. While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In Cox v. Louisiana, 379 U.S. 536, 554 (1965), for example, the Court clearly stated that the rights of free speech and assembly "do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." [518] Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education. [note 2]

The United States District Court refused to hold that the state school order violated the First and Fourteenth Amendments. 258 F.Supp. 971. Holding that the protest was akin to speech, which is protected by the First [519] and Fourteenth Amendments, that court held that the school order was "reasonable" and hence constitutional. There was at one time a line of cases holding "reasonableness" as the court saw it to be the test of a "due process" violation. Two cases upon which the Court today heavily relies for striking down this school order used this test of reasonableness, Meyer v. Nebraska, 262 U.S. 390 (1923), and Bartels v. Iowa, 262 U.S. 404 (1923). The opinions in both cases were written by Mr. Justice McReynolds; Mr. Justice Holmes, who opposed this reasonableness test, dissented from the holdings as did Mr. Justice Sutherland. This constitutional test of reasonableness prevailed in this Court for a season. It was this test that brought on President Franklin Roosevelt's well-known Court fight. His proposed legislation did not pass, but the fight left the "reasonableness" constitutional test dead on the battlefield, so much so that this Court in Ferguson v. Skrupa, 372 U.S. 726, 729, 730, after a thorough review of the old cases, was able to conclude in 1963:

"There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy.
. . . .
"The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases--that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely--has long since been discarded."

The Ferguson case totally repudiated the old reasonableness-due process test, the doctrine that judges have the power to hold laws unconstitutional upon the belief of judges that they "shock the conscience" or that they are [520] "unreasonable," "arbitrary," "irrational," "contrary to fundamental 'decency,'" or some other such flexible term without precise boundaries. I have many times expressed my opposition to that concept on the ground that it gives judges power to strike down any law they do not like. If the majority of the Court today, by agreeing to the opinion of my Brother FORTAS, is resurrecting that old reasonableness-due process test, I think the constitutional change should be plainly, unequivocally, and forthrightly stated for the benefit of the bench and bar. It will be a sad day for the country, I believe, when the present-day Court returns to the McReynolds due process concept. Other cases cited by the Court do not, as implied, follow the McReynolds reasonableness doctrine. West Virginia v. Barnette, 319 U.S. 624, clearly rejecting the "reasonableness" test, held that the Fourteenth Amendment made the First applicable to the States, and that the two forbade a State to compel little schoolchildren to salute the United States flag when they had religious scruples against doing so. [note 3] Neither Thornhill v. Alabama, 310 U.S. 88; Stromberg v. California, 283 U.S. 359; Edwards [521] v. South Carolina, 372 U.S. 229; nor Brown v. Louisiana, 383 U.S. 131, related to schoolchildren at all, and none of these cases embraced Mr. Justice McReynolds' reasonableness test; and Thornhill, Edwards, and Brown relied on the vagueness of state statutes under scrutiny to hold them unconstitutional. Cox v. Louisiana, 379 U.S. 536, 555, and Adderley v. Florida, 385 U.S. 39, cited by the Court as a "compare," indicating, I suppose, that these two cases are no longer the law, were not rested to the slightest extent on the Meyer and Bartels "reasonableness-due process-McReynolds" constitutional test.

I deny, therefore, that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or expression." Even Meyer did not hold that. It makes no reference to "symbolic speech" at all; what it did was to strike down as "unreasonable" and therefore unconstitutional a Nebraska law barring the teaching of the German language before the children reached the eighth grade. One can well agree with Mr. Justice Holmes and Mr. Justice Sutherland, as I do, that such a law was no more unreasonable than it would be to bar the teaching of Latin and Greek to pupils who have not reached the eighth grade. In fact, I think the majority's reason for invalidating the Nebraska law was that it did not like it or in legal jargon that it "shocked the Court's conscience," "offended its sense of justice," or was "contrary to fundamental concepts of the English-speaking world," as the Court has sometimes said. See, e.g., Rochin v. California, 342 U.S. 165, and Irvine v. California, 347 U.S. 128. The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of [522] speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite. See, e.g., Cox v. Louisiana, 379 U.S. 536, 555; Adderley v. Florida, 385 U.S. 39.

In my view, teachers in state-controlled public schools are hired to teach there. Although Mr. Justice McReynolds may have intimated to the contrary in Meyer v. Nebraska, supra, certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-

fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach. The true principles on this whole subject were in my judgment spoken by Mr. Justice McKenna for the Court in Waugh v. Mississippi University in 237 U.S. 589, 596-597. The State had there passed a law barring students from peaceably assembling in Greek letter fraternities and providing that students who joined them could be expelled from school. This law would appear on the surface to run afoul of the First Amendment's [523] freedom of assembly clause. The law was attacked as violative of due process and of the privileges and immunities clause and as a deprivation of property and of liberty, under the Fourteenth Amendment. It was argued that the fraternity made its members more moral, taught discipline, and inspired its members to study harder and to obey better the rules of discipline and order. This Court rejected all the "fervid" pleas of the fraternities' advocates and decided unanimously against these Fourteenth Amendment arguments. The Court in its next to the last paragraph made this statement which has complete relevance for us today:

"It is said that the fraternity to which complainant belongs is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the State of Mississippi to determine. It is to be remembered that the University was established by the State and is under the control of the State, and the enactment of the statute may have been induced by the opinion that *membership in the prohibited societies divided the attention of the students and distracted from that singleness of purpose which the State desired to exist in its public educational institutions.* It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity." (Emphasis supplied.)

It was on the foregoing argument that this Court sustained the power of Mississippi to curtail the First Amendment's right of peaceable assembly. And the same reasons are equally applicable to curtailing in the States' public schools the right to complete freedom of expression. Iowa's public schools, like Mississippi's university, are operated to give students an opportunity to learn, not to talk politics by actual speech, or by "symbolic" [524] speech. And, as I have pointed out before, the record amply shows that public protest in the school classes against the Vietnam war "distracted from that singleness of purpose which the State [here Iowa] desired to exist in its public educational institutions." Here the Court should accord Iowa educational institutions the same right to determine for themselves to what extent free expression should be allowed in its schools as it accorded Mississippi with reference to freedom of assembly. But even if the record were silent as to protests against the Vietnam war distracting students from their assigned class work, members of this Court, like all other citizens, know, without being told, that the disputes over the wisdom of the Vietnam war have disrupted and divided this country as few other issues ever have. Of course students, like other people, cannot concentrate on lesser issues when black armbands are being ostentatiously displayed in their presence to call attention to the wounded and dead of the war, some of the wounded and the dead being their friends and neighbors. It was, of course, to distract the attention of other students that some students insisted up to the very point of their own suspension from school that they were determined to sit in school with their symbolic armbands.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens--to be better citizens. Here a very small number of students have crisply and summarily [525] refused to obey a school order designed to give pupils who want to learn

the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school [526] systems [note 4] in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

MR. JUSTICE HARLAN, dissenting.

I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns--for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.
Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.

Footnotes to the Majority Opinion

1. In Burnside, the Fifth Circuit ordered that high school authorities be enjoined from enforcing a regulation forbidding students to wear "freedom buttons." It is instructive that in Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (1966), the same panel on the same day reached the opposite result on different facts. It declined to enjoin enforcement of such a regulation in another high school where the students wearing freedom buttons harassed students who did not wear them and created much disturbance.

2. Hamilton v. Regents of Univ. of Cal., 293 U.S. 245 (1934), is sometimes cited for the broad proposition that the State may attach conditions to attendance at a state university that require individuals to violate their religious convictions. The case involved dismissal of members of a religious denomination from a land grant college for refusal to participate in military training. Narrowly viewed, the case turns upon the Court's conclusion that merely requiring a student to participate in school training in military "science" could not conflict with his constitutionally protected freedom of conscience. The decision cannot be taken as establishing that the State may impose and enforce any conditions that it chooses upon attendance at public institutions of learning, however violative they may be of fundamental constitutional guarantees. See, e.g., West Virginia v. Barnette, 319 U.S. 624 (1943); Dixon v. Alabama State Board of Education, 294 F.2d 150 (C. A. 5th Cir. 1961); Knight v. State Board of Education,

200 F.Supp. 174 (D. C. M. D. Tenn. 1961); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (D. C. M. D. Ala. 1967). See also Note, Unconstitutional Conditions, 73 Harv. L. Rev. 1595 (1960); Note, Academic Freedom, 81 Harv. L. Rev. 1045 (1968).

3. The only suggestions of fear of disorder in the report are these:

"A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control."

"Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed."

Moreover, the testimony of school authorities at trial indicates that it was not fear of disruption that motivated the regulation prohibiting the armbands; the regulation was directed against "the principle of the demonstration" itself. School authorities simply felt that "the schools are no place for demonstrations," and if the students "didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools."

4. The District Court found that the school authorities, in prohibiting black armbands, were influenced by the fact that "the Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views." 258 F.Supp., at 972-973.

5. After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed to publication of his article. They reported that "we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one."

6. In Hammond v. South Carolina State College, 272 F.Supp. 947 (D. C. S. C. 1967), District Judge Hemphill had before him a case involving a meeting on campus of 300 students to express their views on school practices. He pointed out that a school is not like a hospital or a jail enclosure. Cf. Cox v. Louisiana, 379 U.S. 536 (1965); Adderley v. Florida, 385 U.S. 39 (1966). It is a public place, and its dedication to specific uses does not imply that the constitutional rights of persons entitled to be there are to be gauged as if the premises were purely private property. Cf. Edwards v. South Carolina, 372 U.S. 229 (1963); Brown v. Louisiana, 383 U.S. 131 (1966).

Footnotes to Justice Black's Opinion

1. The petition for certiorari here presented this single question:

"Whether the First and Fourteenth Amendments permit officials of state supported public schools to prohibit students from wearing symbols of political views within school premises where the symbols are not disruptive of school discipline or decorum."

2. The following Associated Press article appeared in the Washington Evening Star, January 11, 1969, p. A-2, col. 1:

"BELLINGHAM, Mass. (AP)--Todd R. Hennessy, 16, has filed nominating papers to run for town park commissioner in the March election.

"I can see nothing illegal in the youth's seeking the elective office,' said Lee Ambler, the town counsel. 'But I can't overlook the possibility that if he is elected any legal contract entered into by the park commissioner would be void because he is a juvenile.'

"Todd is a junior in Mount St. Charles Academy, where he has a top scholastic record."

3. In Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940), this Court said:

"The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

4. Statistical Abstract of the United States (1968), Table No. 578, p. 406.

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(Selection)

Justice Black

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State."

Biography of James E. Barrett

James F. Barrett was born in Lusk, Wyoming in April, 1922. His father, Frank, was a lawyer for several years and was elected to the state senator from Niobrara County, U.S. Congressman, U.S. Senator, and Wyoming Governor. James Barrett grew up in Niobrara County and went to school at the University of Wyoming. During World War II, he served in the U.S. Army, commanded by General George Patton, and participated in the landings at Omaha Beach during the Allied invasion in June 1944. When the war was over, Barrett came back to UW and received his law degree in 1949. He practiced law in Lusk for almost 20 years, working as an attorney in private practice, for the town of Lusk, for Niobrara School District No. 1, and as prosecuting attorney for Niobrara County. In 1967, Mr. Barrett was appointed by Governor Stan Hathaway as Wyoming attorney general. Preceding the Black 14 Incident, Barrett handled numerous civil and criminal cases, many involving specific issues dealing with the Wyoming and U.S. Constitutions. In November 1969, when the dismissed football players took UW to federal District Court, Barrett served as counsel for the University of Wyoming. The court found for the university.

In 1971, Attorney General James Barrett was appointed by President Richard Nixon as a judge of the United States Court of Appeals, 10th Circuit. He was also appointed by Chief Justice Warren Burger in 1979 as a judge of the United States Foreign Intelligence Surveillance Court of Review in Washington, D.C. Judge Barrett assumed senior judge status in 1987 but still participates in decisions of the U.S. Court of Appeals. He lives in Cheyenne, Wyoming.

Biography of Charles E. Graves

Charles Graves was born on Staten Island, New York City, in 1931 and graduated from Duke University in Durham, North Carolina, in 1953, where he earned a Bachelor's degree in psychology. He first came to Wyoming as a reporter for the *Casper Wyoming Star* newspaper in 1953. Subsequently, Graves was drafted into the U.S. Army during the Korean War. After spending two years in the Counter Intelligence Corps, he attended the University of Colorado School of Law in Boulder, Colorado, and in 1959, was admitted to practice law in both Wyoming and Colorado.

In addition, he was admitted to practice in the U.S. District Court of Wyoming and the 10th U.S. Circuit Court of Appeals. During the decade preceding his involvement with the Black 14, Graves handled many cases that dealt with constitutional law, employment law, and education law. During that period he also worked extensively on legal problems of students in schools, colleges and universities and developed a particular expertise with the Civil Rights Act of 1869 and its application to persons acting on behalf of a state who deprive citizens of the United States of their civil rights.

In 1969, he was one of the attorneys to represent the Black 14 football players in their lawsuit against Coach Eaton and the University of Wyoming. Charles Graves continued to practice law in Cheyenne, serving as counsel to the Wyoming Education Association and the Cheyenne Housing Authority. In 1977, he was appointed by President Jimmy Carter as U.S. Attorney for the District of Wyoming. In 1981, he returned to the private sector to practice law as the managing partner of his law firm. He retired to Sheridan, Wyoming, where he served as Executive Director of the National Association of Former U.S. Attorneys, becoming president of that group in 1999. Retired, he currently divides his time between Sheridan and Tucson, Arizona.

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Panelist	**Position**
Hamilton, Mel	Administrator, Natrona County School District #1, Casper, WY (UW football player, Fall 1969)
Karpan, Kathy	Attorney, Cheyenne, former Wyoming Secretary of State, (Student, UW Law School, Fall 1969)
White, Phil	Attorney, Reporter, (Editor of Branding Iron, Fall 1969)
Presenter	
Parkinson, Jerry	Dean, UW College of Law, Laramie, WY
Roberts, Phil	UW Professor of History, UW, Laramie, WY
Zumo, Jacob	Student, Cheyenne East High School, Cheyenne, WY

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Person	**Position in 1969**
Barrett, James, February, March 2009	Wyoming Attorney-General/ Attorney for Defendants - Coach Eaton and UW
Carlson, Earl and Beverly, May 2009	Son of and wife of UW President William Carlson
Graves, Charles, March, May, June 2009	Cheyenne Attorney/Attorney for Plaintiffs - Black 14
Gustofson, Burt, August 2009	UW Football Defensive Coach
Hamilton, Mel, February, March 2009	Defendant/ UW Student/ UW football player
Keen, Jim and Anita, July 2009	UW Students, UW football player
McGee, Anthony, April, May, June, July 2009	Defendant/UW Student/UW football player
McKinney, Kevin, July 2009	UW Student/Student Intern UW Sports Information Office

Nels, Larry, August 2009	UW Student/Tri-Captain, UW football team
Roach, Paul, April, May 2009	UW Football Offensive Backfield Coach
Speight, Jack, June 2009	Chief of Staff for Gov. Hathaway
Swaim, Robert, July 2009	UW Student/Photographer UW Branding Iron
Tucker, Tom, August 2009	UW Student/Tri-Captain UW football team
Williams, Joe, April, May, June, July 2009	Defendant/UW Student/ Tri-Captain, UW football team

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