Courting disorder in the schools

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WHEN twelve students and a teacher were shot dead in the Columbine High School massacre, public alarm (abetted by the media) was inevitable. In a Newsweek poll immediately following the killing, 63 percent of Americans said that it was "very or somewhat likely that a shooting incident could happen in their schools." In fact, however, such shootings remain rare—and thus newsworthy. Fewer than 1 percent of homicides involving school-age children actually occur in or near schools, according to the Centers for Disease Control. When kids are killed, it's almost always elsewhere. "Have you ever ... had a weapon such as a gun or knife, pulled on you at school?" California students were asked in a 1998 survey. Only 2 percent answered yes.

Nevertheless, schools are hardly islands of tranquility. In that same California poll, students were asked to name "the most important problem" facing their local school; 32 percent

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said "crime/gangs/violence/drugs." Just plain disorder, incivility, and disobedience should have been added to the list. In the academic year 1989-90, *New York Newsday*'s education reporter, Emily Sachar, taught eighth-grade mathematics at the Walt Whitman Intermediate School in Brooklyn, New York. Many kids, she discovered, had never been taught how to sit still, how to control what they said, how to behave. Her students called her "cuntface," told her "to fuck off," spat in her face, played radios during class, and threw chairs at one another. Even if a majority wanted to learn, a small group of troublemakers could turn the room upside down in minutes. Sachar's story is hardly unique. A parent participating in a Public Agenda focus group in the winter of 1997-98 reported after visiting a Cleveland middle school: "I didn't want to go in.... The school was a madhouse; it was filthy. Who's in control here? The kids?"

Such stories (easy to come by) are supported by some data. In a 1991 survey, 58 percent of secondary-school teachers said they had been verbally abused at some point in their teaching career—23 percent in the four weeks prior to the poll. Where there is verbal abuse, there are usually fights, vandalism, gangs, and drugs as well. The point is a variation on James Q. Wilson's well-known "broken windows" thesis: Ignore the small stuff, and serious crime gets a green light. If the national picture is consistent with that in California, only a small percentage of individual students (across all grades) have actually had a knife or gun pointed at them. But other data suggest that only a minority of schools are entirely crime free. The National Center for Educational Statistics (NCES) surveyed schools in the academic year 1996-97; 57 percent reported at least one crime to the police. Since rapes, robberies, physical attacks or fights involving a deadly weapon, and other forms of serious crime—at least some of which goes unreported—seldom occur in elementary schools, the secondary-school picture must be considerably worse than the 57 percent total suggests.

The headline-grabbing shootings in Colorado, Kentucky, Mississippi, Arkansas, and Oregon in the past two years have all been in suburban schools, perhaps, in part, because they had not installed the extraordinary range of security measures one finds in many urban schools—photo ID cards worn around the
neck, video cameras, undercover and regular police, drug-sniffing dogs, and, of course, metal detectors. But such measures are concentrated in inner-city schools because the problem of crime—to say nothing of disorder—is indisputably greater in urban settings, particularly those with high numbers of minority students.

Thus, in the 1996-97 school year, the rate of serious violent crime was 19 per 100,000 students in 95 percent white schools, but 96 in schools with at least 50 percent minority enrollment. A fall 1996 survey found that 41 percent of black high-school students, as compared with 27 percent of whites, felt that disruptive students were a "very serious problem" at their school. The disparity is important because, on average, black and Hispanic students are academically far behind whites and Asians. Violence and disorder surely affect the level of learning. "Serious and nonserious offenses [are] negatively related to gains in achievement," a 1998 Educational Testing Service study concluded. Parents and teachers put the matter more simply. "My kid hates the school. She is scared," a mother of a tenth-grader at the overwhelmingly black Dorchester High School in Boston reports. Scared kids who hate school are not likely to learn much. And teachers who must deal with even a small minority of disruptive students are not very effective. In 1997, a new and frustrated Los Angeles high-school teacher described her English class as "nine-tenths policeman, one-tenth educational."

Everyone has lawyers

Every teacher knows that students cannot learn in chaotic and threatening classrooms. Why, then, is the problem not more effectively addressed? A parent in Haddonfield, New Jersey, had her own answer: "They're terrified of lawsuits."

"Everyone has lawyers today, and that is why we have an elaborate structure established as far as disciplinary hearings," the president of the Cambridge (MA) Teachers Association told a Boston Globe reporter. Eugene G. Liss, a lawyer who represents teachers in Newark, has estimated that 20 to 40 teachers in his district face criminal charges every year, many of them presumably baseless. And criminal suits are frequently supplemented by civil ones. In Montclair, New Jersey, a teacher
merely grabbed the arm of a fifth-grader who had been hurling grapes in the lunchroom; the parents filed a suit, and the teacher lost his job. When a teacher in a nearby district tried to explain the consequences of misbehaving, a second-grader riposted, “There’s nothing you can do because I’ll call DYFS”—the Division of Youth and Family Services, which can refer complaints to police or prosecutors. “As soon as they get into a confrontation with a teacher, they make up a story and go to DYFS,” the president of a local teachers union remarked. The DYFS receives about 300 complaints a year.

In the course of outlining what teachers can and cannot do, Liss said: “You can’t humiliate kids.... You can’t badger, humiliate or harass.” But what precisely does this mean? If the law were clear, the answer would be readily available. But it is not. What is clear is that students now have rights previously inapplicable to them. True, these rights are more limited today than they were 20 years ago. However, the precise line between permissible and impermissible disciplinary action has never been drawn.

There is still another complicating factor. Students who qualify for special education are exempt from long-term suspensions, expulsion, and other severe measures, and these protections undoubtedly shape disciplinary strategies for ordinary students as well.

**The Supreme Court steps in**

Once upon a time, in an altogether different era, the disciplinary powers of schools were quite clear. There was a seamless line between parents and teachers—the latter serving, literally, as *in loco parentis*. The teacher’s authority began when the student left home in the morning and lasted until he returned home. Thus “most parents would expect and desire that teachers would take care that their children, in going to and returning from school, should not loiter, or seek evil company,” the Vermont Supreme Court held in 1859. Over the next century, this doctrine changed. Discipline came to be seen in a wider context—as a means by which the mores of the larger society were inculcated. But the notion of societal values in conflict—the civil liberties of students versus the institutional order—is of relatively recent origin. In fact, not
until the Tinker decision in 1969 did the U.S. Supreme Court sharply limit the authority of schools.

_Tinker v. Des Moines Independent Community School District_ involved three students who wore black armbands as a gesture of protest against the Vietnam War. They were suspended in accordance with the school's policy, of which they had been warned. Both the federal district court and the Court of Appeals for the Eighth Circuit upheld the suspensions. The Supreme Court, however, reversed. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," Justice Abraham Fortas wrote in an opinion joined by four other members of the Court. "In our system," he argued, "state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students."

_Tinker_ did raise a legitimate First Amendment question, but the Court's politically charged rhetoric obscured what was at stake. No one had suggested that schools should be, or had ever been, "enclaves of totalitarianism," or that their authority was "absolute." The issue, as Justice Potter Stewart noted in his concurrence, was whether "the First Amendment rights of children [were] co-extensive with those of adults," as five members of the Court seemed to think. The reasoning of the majority was vulnerable in another respect. Fortas placed great emphasis on the fact that only three students had participated in the protest—a number too small to pose a true disciplinary problem. The learning process had not been disrupted. And indeed, the "discomfort and unpleasantness" elicited by the promulgation of unpopular views is the price Americans must pay if they are to preserve their "independence and vigor" in a "relatively permissive, often disputatious, society."

Had the students been skinheads, donning swastikas, would the Court have ruled differently? And what if 500 students had joined the ant iw ar protest? At that point would democratic "discomfort" have become an intolerable disruption? The Court did not say. Fortas could have simply limited himself to the facts of the case—students expressing their political views in a silent, symbolic, and nonviolent manner. But instead, he celebrated conflict and permissiveness, even within the school-
house walls, as if the future of democracy and American institutions would have been jeopardized had the students been forced to doff their armbands.

The Fortas opinion, of course, carried the day, but it did not convince Justice Hugo Black—normally a staunch defender of First Amendment rights. Black viewed excessive permissiveness, not a disciplined social order, as the real threat to democracy. "I have never believed," he said, "that any person has the right to give speeches or engage in demonstrations where he pleases and when he pleases." When students in state-supported schools "can defy and flout orders of school officials ... it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.... Uncontrolled and uncontrollable liberty is an enemy to domestic peace." With this decision, Black believed, the authority of teachers had been eviscerated. The courtroom doors had been cast open to litigious, immature, obstinate—even violent—students, now depicted as oppressed freedom-fighters by the Court. What had begun as merely a few black armbands would go on to empower students who were already "running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins," Black warned.

A more vivid clash of cultures in a Supreme Court decision is difficult to find. But the deep division on the Court, as is so often the case, mirrored the splintering of society as a whole. Protest—even civil disobedience—had acquired an unprecedented moral standing as a consequence of the civil-rights movement and opposition to the Vietnam War. And yet, for many Americans, the massive antiwar demonstrations in 1968, as well as the four long, hot summers of rioting that began in a black ghetto of Los Angeles in 1965, were ominous signs of the political culture unraveling. In addition, the rate of violent crime had gone up by a stunning 25 percent between 1960 and 1965 and was still climbing sharply when the Court heard the Tinker case.

Backlash was setting in—indeed, had already set in. In 1966, the Republicans gained 49 seats in the House of Representatives and six in the Senate; eight governorships also switched from Democratic to Republican hands. A September, 1968 poll found that 81 percent of the public felt that "law and order [had] broken down." Two months later, Richard Nixon
won the White House stressing precisely that theme. Fortas thought that student demonstrations confirmed "the independence and vigor of Americans," but Black understood that independent and vigorous Americans had not endorsed social chaos. Black, along with most Americans, believed that "school discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens."

**Rights revolution**

*Tinker* would allow students and parents to construe every school disciplinary action as a subject of judicial interpretation, Black warned. Most school-discipline cases never reach the Supreme Court, but in *Goss v. Lopez*, decided in 1975 (six years after *Tinker*), the Court, just as Black had feared, dramatically extended the rights of public-school students.

*Goss* involved suspensions from high school for up to 10 days without a hearing—a disciplinary action the Court declared unconstitutional. Students who faced temporary suspension from a public school have property and liberty interests that are protected by the due process clause of the Fourteenth Amendment, Justice Byron R. White argued, writing for a majority of five. Public education is a property interest—a right to a benefit embedded in Ohio law—and the state "may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred." Moreover, "where a person's good name, reputation, honor or integrity is at stake," due process must be observed. Wrongful exclusion from school is a "serious event"; effective notice and an informal hearing would provide "a meaningful hedge against erroneous action." And, while the Court in this case demanded only informal procedures, it also held that "longer suspensions or expulsions ... may require more formal procedures"—an ominous sign of possible future rulings.

Again the Court was deeply divided; four members dissented. "The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education," Justice Lewis F. Powell, Jr., wrote. "For the first time," the Court has granted
to the judiciary "the authority to determine the rules applicable to routine classroom discipline." Equally troubling to Powell was the foundation upon which the case for judicial intervention was built. The Court, he said, seems to have adopted the sentiments of the district court, which concluded that a suspended student might suffer psychological injury—for instance, a loss of "self-esteem" or a sense of being "powerless." By this logic, discipline—of any sort—was harmful. And yet, as Powell put it, "Education in any meaningful sense includes the inculcation of an understanding in each pupil of the necessity of rules and obedience thereto."

Once again, the larger culture war was displayed in a Supreme Court decision. Powell spoke despondently of living in "an age when the home and church play a diminishing role in shaping the character and value judgments of the young." Having supplanted these age-old institutions, the school would have to become the place where America's youth learned self-discipline and a respect for rules. But the lower court had depicted psychologically vulnerable students at the mercy of stern authorities who make erroneous or unfair decisions, and Justice White had conjured up the image of schools as institutions with potentially "untrammeled power." Suspension—even for just one day—was a "serious event" that deprived students of their right to an education, White had argued. Powell believed precisely the opposite: He assumed that suspensions were necessary to create an environment in which students could learn.

By a slim majority

The invitation extended by the Court in Tinker was taken seriously. It inspired hundreds of suits filed by pupils alleging violations of their constitutional rights by rules regulating, among other things, dances, student elections, hair length, movies, textbook selections, school plays, and newspapers. The due process protections specifically guaranteed by Goss were minimal, but the decision inexorably rolled out the welcome mat. And yet, there was a limit beyond which even the Court—by a slim majority—was not willing to go. That limit was delineated in a case decided in 1977, two years after Goss.

The central issue in Ingraham v. Wright was the Eighth Amendment's ban on cruel and unusual punishment. Florida
law still allowed corporal punishment, and two junior-high students, who were paddled on the buttocks, decided to sue. The Court was again split five to four, but, in this case, the school prevailed. Indeed, it was Powell, the author of the Goss dissent, who delivered the majority opinion.

The Eighth Amendment protects citizens against torture, excessive bail, and other severe actions imposed upon those convicted of crimes, Powell said. The plaintiffs' claim was a flagrant distortion of the Constitution's scope, he suggested. (The death penalty, it's worth remembering, does not violate the Eighth Amendment.) The argument extended Powell's point in Goss: School suspensions were not the equivalent of criminal arrests, and a paddling was not torture. In addition, "in virtually every community where corporal punishment is permitted in schools, [existing] safeguards are reinforced by the legal constraints of the common law." Teachers inflicting excessive punishment are liable to criminal and civil prosecution. This was the legal argument, but Powell had a greater concern, evident in his Goss dissent. "Disciplinary problems [were] commonplace in the schools." Were courts to become assistant principals, deciding, on a case-by-case basis, how best to respond to student misbehavior?

It was the right question, but the answer was already clear. As much as Powell would have preferred to let elected officials, administrators, and teachers run the schools, issues pertaining to routine disciplinary procedures had been irrevocably constitutionalized. The difficulty was that even Powell had to acknowledge that punishment could be "unreasonable," and given the sweeping definition of individual rights and judicial power that began with the Warren Court, courts would inevitably play a fundamental role in defining the acceptable and unacceptable. Moreover, deference to institutions of authority had gone out of fashion throughout much of American culture. The disciplinary prerogatives once given to schools could never again be exercised. Thus while Ingraham was a victory for the defendant—although by the slimmest of Court majorities—it would not discourage future plaintiffs. The Court's reading of the Eighth Amendment was a legal sideshow that would have little impact on constitutional claims that rested on less dubious grounds.
“Reasonable” searches

If the Eighth Amendment was, and remained, an unlikely means of constitutional redress for student grievances, the same could not have been said for the Fourth Amendment, which the Court had already expansively interpreted. By the mid 1980s, the argument that students had absolutely no right “to be secure in their persons ... papers, and effects” would have been dead on arrival. But what were the Fourth Amendment’s precise dimensions in the educational context? That was the question in *New Jersey v. T.L.O.*, a 1985 Court case.

*T.L.O.* involved a freshman in a New Jersey high school who had been found smoking in the bathroom. When she told the assistant vice-principal that she never smoked, he demanded to see her purse. Upon opening it, he discovered not only a pack of cigarettes but evidence that she was selling marijuana at school. The student subsequently confessed, but the New Jersey Supreme Court ruled that the search was unreasonable and ordered the evidence to be suppressed in juvenile court. The U.S. Supreme Court reversed.

The Fourth Amendment provides protection only against “unreasonable” searches and seizures. It requires law-enforcement officers to demonstrate “probable cause” when obtaining a search warrant. But not all government searches require a warrant, and, among those that don’t, some need not meet the probable-cause standard. In situations where probable cause is too high a standard, the question becomes: When governmental interests are weighed against the individual’s right to privacy, does the search appear to have been reasonable?

School officials are representatives of the state and thus subject to Fourth Amendment constraints. But they need not obtain a search warrant, the Court held in *T.L.O.* Nor do they have to show probable cause in justifying a search. Schools have a “legitimate need to maintain an environment in which learning can take place,” Justice White wrote for another majority of five. “In recent years, school disorder has taken particularly ugly forms: drug use and violent crime in the schools have become major social problems.” A reasonable search—one that is rational in its purpose and not excessively intrusive—is legal.

Justice William J. Brennan, Jr.—joined by Justice Thurgood
Marshall—called the Court's standard "unclear." When were searches "reasonable" and permissible in scope? Judges were engaged in what Brennan called a "Rorschach-like 'balancing test.'" T.L.O. left more questions unanswered than it resolved, ensuring subsequent Fourth Amendment litigation. Only one thing had been settled: Both students and schools were vulnerable—students to searches, schools to endless litigation challenging those searches.

The majority opinion, in a footnote, warned that the Court had not addressed the question of whether students had legitimate expectations of privacy in "lockers, desks, or other school property." But most subsequent lower court decisions gave teachers and principals considerable rights to search students they suspected of wrongdoing. That power was confirmed in the Supreme Court's 1995 decision in *Vernonia School District 47J v. Wayne Acton*, which upheld the random drug testing of student athletes. The Fourth Amendment usually allows searches only when an individual has acted in a suspicious manner, but this constraint could be overridden by a state's compelling interest in combating a serious drug problem, Justice Antonin Scalia concluded for a majority of six. "That the nature of the concern is important ... can hardly be doubted," he wrote. "Deterring drug use by our Nation's school-children is at least as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs."

With the Court decision in *Vernonia*, the power of schools to conduct "reasonable" searches—even random ones—would seem to have become clear. Thus schools with a demonstrable problem and a carefully tailored search policy have been allowed to conduct suspicionless searches by means of metal detectors. Yet the door has not been closed on Fourth Amendment suits. Details differ from one case to another, and the murky standard of "reasonability" is an invitation for judicial reinterpretation. Thus litigation remains an enticing option for many. There will always be plaintiffs, lawyers, and judges who have a new perspective on an old problem.

Schools have been given considerable discretion to engage in both random and targeted searches, and that power undoubtedly prevents some students from bringing weapons and drugs into the building. But the sheer number of lawless kids
can overwhelm any security system, as the NCES survey on school violence suggests. Moreover, the right to conduct reasonable searches may cut down on violence and theft, but it does not solve such disciplinary problems as disobedience, verbal abuse, vandalism, fist fights, sexual assault, and general disorder. Much more important than the right to inspect a student’s purse is the right to remove students from the classroom or school in which their conduct is unacceptable. Short-term suspensions are easy, provided minimal due process rights are observed, but long-term suspensions and expulsions are at best a hassle and at worst a nightmare. Teachers are vulnerable to both criminal charges and civil suits.

“Disability” as a civil right

America is a litigious society, and schools are inevitably enmeshed in the legal web woven not only by judicial rulings but also by the statutes and regulations drafted to interpret them. The legal rights and prohibitions resulting from legislation are arguably the true impediments to school discipline. In 1975, Congress passed the Education for All Handicapped Children Act, and since then, students with a multitude of disabilities, including those with a “serious emotional disturbance,” have been nearly exempted from standard disciplinary procedures.

Federal protection for disabled youth, now extensive and costly, got a quiet and innocuous start in 1966, when Congress added Title VI to the Elementary and Secondary Education Act (ESEA), passed the year before. The amendment was mainly an appropriations measure, providing money to the states for plans designed “to meet the special educational and related needs of handicapped children.” But already, “handicapped” was to include the “seriously emotionally disturbed”—a decision of great import for the future.

The ESEA was further modified in 1970 by a package of amendments known as the Education of the Handicapped Act (EHA). The statute was still primarily a funding measure, and states retained considerable power to shape their own programs. But that power began to erode in the early 1970s, partly because two judicial decisions made education—even for the “emotionally disturbed” child—an entitlement that “must
be made available to all on equal terms." In Tinker, the Supreme Court had overturned the suspension of student anti-war protesters. Three years later, in 1972, a federal district court ruled that nearly all children had the right to attend school. Public education, even for children with a "mental, physical or emotional disability or impairment," had become an entitlement. A child suspended for more than two days was entitled to a hearing, legal representation at the hearing, diagnostic services, and the provision of an alternative education.

Education of the "disabled"—a category that included children with behavioral and emotional problems ranging from the merely hyperactive to the violent—had become a basic civil right. It was a decision soon ratified by Congress. Four ground-breaking bills were passed in the years 1973 to 1975. The first two bills added, and then amended, Section 504 of the Rehabilitation Act of 1973, which gave broad antidiscrimination protection to the handicapped in all federally funded programs. The third bill further altered the Elementary and Secondary Education Act by incorporating language that promised to provide "full educational opportunities for all handicapped children." Among the rights the statute ensured was entitlement to due process hearings when the school sought to change the classroom placement of an emotionally "disabled" child. Moreover, unless totally incapable of learning, even with prodigious supplemental tutoring, such children were entitled to instruction in a "regular education environment."

Congressional action, however, did not stop there. In 1975, it passed the Education for All Handicapped Children Act (EAHCA), renamed the Individuals with Disabilities Education Act (IDEA) in 1990. The 1975 legislation instructed districts to identify all disabled children properly and appropriated substantial federal funds to help states meet their special-education needs. But it also spoke of the "unique needs" of children with disabilities and the necessity of providing extensive protection for their procedural rights. Parents were allowed a role at every step in the evaluation process, and were entitled to an impartial hearing concerning their child's educational placement. Moreover, parents, or the district, could pursue matters further in state or federal district court. As the Supreme Court made clear in a 1988 decision, the emo-
tionally disturbed child could not be removed for longer than 10 days at any one time. After that brief expulsion, even the dangerous or disruptive child was entitled to "stay put" in the classroom to which he had been assigned. Unless, that is, the unacceptable conduct was totally unrelated to the student's "disability." Or unless the hearing officer or a court approved of another placement—or the parties agreed to one.

A disciplinary nightmare

IDEA remains the principal federal statute that describes the educational rights of the disabled student. Like the statute that preceded it, IDEA protects disabled students in general, including those with a "serious emotional disturbance." The phrase covers a range of children, because the definition of "serious emotional disturbance" is willfully vague. "An inability to build or maintain satisfactory interpersonal relationships with peers and teachers," for instance, is one sign of a disability, although what constitutes a "satisfactory" relationship is never mentioned. And while students who are merely "socially maladjusted" are not protected by the act, the distinction between "maladjusted" and "disturbed" is never given. The statutorily mandated, multidisciplinary team that evaluates a child is left to fill in the blanks.

Thus the evaluation may label as emotionally "disabled" the child who was formerly called "bad" or "wild" or "difficult." Antisocial acts have become expressions of illness. A child who is blind or in a wheelchair needs help, not discipline. The same is now said of the student selling drugs or habitually starting fights.

IDEA is informed by the "illness" paradigm. Districts must create an individualized educational program (IEP) for all children with disabilities—emotional as well as physical—and to the maximum extent possible, they must be educated in regular classrooms. Exceptions can be made "only when the nature or the severity of the disability is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily."

Unlike regular pupils, special-education students with severe disciplinary problems cannot be expelled or subjected to lengthy suspension if their behavior is related, at least in part,
to their disability. Thus the child labeled "emotionally disturbed," who throws a desk at a teacher, cannot be permanently kicked out of the classroom unless a psychologist, or another member of his evaluative team, sees no connection between the student's violence and his "disability"—an exceedingly unlikely finding, given the nature of the illness paradigm. Removing a special-education student from a classroom for more than 10 days remains very difficult procedurally, although the original statute has been modified to allow schools to provide alternative placement, for up to 45 days, if a student shows up with drugs or a weapon, or if a hearing officer has determined that the student is dangerous.

The elaborate procedural protections embedded in IDEA mean, as the New York Times has noted, that every school "has a story about the problems of disciplining children with disabilities—the wild kindergartner who disrupts classes for everyone else but cannot legally be removed from class, or the gang of youngsters caught selling drugs in which all are expelled except the one diagnosed with a disability." It has long been an issue of central concern to the American Federation of Teachers (AFT). "Many [schools] have become afraid of litigation and financial penalties," Marcia Reback, an AFT spokesman, testified at a U.S. Senate subcommittee hearing in July 1995. "Either because the law was misunderstood or out of fear of litigation, a North Carolina student who broke her teacher's arm was suspended for only two days. When an Oklahoma City student stabbed a principal with a nail, he was suspended for only three days," she went on. Such minor penalties send a message not only to teachers but also to the students.

If schools try to act on behalf of regular students whose education is disrupted by troublemakers, they risk, at best, endless hours compiling a meticulous paper trail, and, at worst, defeat in a courtroom many years down the road. In addition, teachers who cannot punish "emotionally disturbed" children are often reluctant to put their foot down with students who are "socially maladjusted" but have not been classified as disabled. Even if they feel obligated to have different standards for different students, another problem arises: what the AFT has called the "battered teacher syndrome"—the belief that being pummeled, bitten, spit at, pushed, and assaulted comes with the job.
Schools as battlefields of cultural change

When the first version of IDEA was passed in 1975, “nobody envisioned ... the kinds of discipline problems that are on the table now,” Michael Resnick, associate executive director of the National School Boards Association, said in 1997. “And no one anticipated how much the culture would change and how big an issue discipline would become in the schools,” he went on.

The vulnerability of the young psyche, damage to which brings dire consequences, is a theme that runs through judicial and legislative decisions protecting disruptive youngsters. As Reback of the AFT explained: “The logic works this way: there is a presumption that any disability causes a loss of self-esteem, and it is this damage to self-image that causes the violent or disruptive behavior.” As a result, hearing officers and judges label almost all disruptive or violent behavior a manifestation of one disability or another.

IDEA makes the long-term suspension or expulsion of an emotionally disturbed child exceedingly difficult, and Goss and other judicial decisions have ensured due process rights for all students. The power of the federal courts and Congress is now felt in every classroom. Those schools that wish to do so can use metal detectors, surveillance cameras, and other means to discourage violent crime, but it’s very hard to get rid of the disruptive students who attend school erratically, wander in and out of classrooms, play their radios and talk to friends, swear at the teachers, taunt other kids, start fights, and do almost no schoolwork. Good principals and skilled teachers, through a variety of strategies, can—at best—limit the educational damage.

Perhaps Littleton will be a turning point, however, forcing judges and legislators to heed the opinions of parents. In contrast to elite opinion, the American public has never had much patience for civic disorder—not even in the 1950s and early 1960s, when basic civil rights were truly at stake. And today, there is remarkable agreement on the need for discipline in the schools.

A 1998 Public Agenda survey of parents found that 93 percent of blacks and 97 percent of whites think it “absolutely essential” that schools “be free from weapons, drugs, and gangs.”
Eighty-two percent of blacks, and 87 percent of whites are equally adamant about making “sure that students behave themselves in class and on the school grounds.” Fully 81 percent of black, and 86 percent of white, parents believe “taking persistent troublemakers out of class so that teachers can concentrate on the kids who want to learn” is an excellent or good idea.

Blacks in the Public Agenda survey were slightly less concerned than whites about school discipline, suggesting some may worry that their children will be unfairly singled out for harsh treatment. But the overwhelming majority evidently understand that it is their kids—disproportionately concentrated in urban schools with generally low levels of academic achievement—who have the most to gain from less indulgent rules. Disorder further disadvantages those who already have the least. Education is the key to economic opportunity; if a safe environment for learning cannot be secured, deprived kids will continue to pay a stiff, lifelong price.