lies even if there is no proof of scienter, that is, that defendant knew or had reason to know that his conduct infringed a federal right.[17]

"The federal courts can not determine whether an applicant is entitled to a license, but they can insure that the constitutional principles of due process and equal protection are followed."[18] If there are no ascertainable standards established by the governing authority by which an applicant can intelligently seek to qualify for a license, then the court must enjoin the denial of licenses under such system.[19]

For all intent and purposes, the privilege doctrine, as espoused by Georgia law and state court decisions, is a dead letter. May it rest in peace.

JAY C. MINER

CONSTITUTIONAL LAW—CIVIL RIGHTS—SCHOOLS CAN REGULATE STUDENTS' PERSONAL APPEARANCE

The plaintiff filed suit in federal district court on behalf of his minor son against the Orleans Parish School Board, its superintendent and the principal of the high school where his son was to begin his sophomore year.[1] The school suspended the boy because his hair was too long; the plaintiff requests damages for public embarrassment due to the suspension and for the issuance of a preliminary injunction. The case is based on the Civil Rights Act[2] and the rights guaranteed by the first, eighth, nineteenth and fourteenth amendments of the United States Constitution.

The court held that the school order requiring the student to cut his hair did not infringe upon his constitutional rights buttressed by the Civil Rights Act. The school order did not violate his right, by virtue of the first amendment, to freedom of expression because long hair symbolizes nothing and symbolic expression protected by the first amendment must symbolize a specific viewpoint or idea. Secondly, long hair is a type of expression manifested through conduct and is therefore subject to reasonable state regulation. Assuming that the ninth amendment purports to protect "fundamental rights" not mentioned in the Bill of Rights, the plaintiff cannot base his suit on the ninth amendment because the right to free choice of grooming is not a "fundamental right." The court also refused to accept the contention that the school order was cruel and unusual punishment prohibited by the eighth amendment.

17. Monroe v. Pape, 365 U.S. 167 (1961); Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964); Rose Chalet Functions Corp. v. Evans, 264 F.Supp. 790 (D. Mass. 1967).
18. 1 GA. BAR JOURNAL 550, 552 (1965); *cf.* Crews v. Undercofler, 249 F. Supp. 13 (N.D. Ga. 1966).
19. Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964).
1. Davis v. Firment, 269 F. Supp. 524 (E.D. La. 1967).
2. Civil Rights Act, 16 Stat. 144 (1870).

Courts generally support this type of decision and uphold the right of school authorities to formulate and enforce reasonable regulations designed to maintain the discipline of the school.[3] Courts are reluctant to consider the wisdom of the rule itself but are more concerned with the reasonableness of the power and discretion exercised by school authorities.[4] Some rules which infringe on a student's constitutional rights are upheld by courts because the rules are imperative for conducting an orderly classroom.[5] The test of reasonableness is whether the rule measurably contributes to the maintenance of order and decorum within the educational system.[6]

For example, a regulation prohibiting the wearing of freedom buttons by students at school was held to be reasonable where evidence indicated that the buttons caused an "unusual degree of commotion, boisterous conduct . . . and a lack of order, discipline and decorum."[7] The same court held a similar rule to be arbitrary, unreasonable and a violation of the students' first amendment right of freedom of speech and liberty of expression where the freedom buttons did not hamper school activity nor distract the minds of students from their teachers.[8]

In another case high school students in Dallas, Texas, were refused admittance to a local high school because they fashioned their hair in conformity with the so-called "Beatle" type hair style.[9] In denying the plaintiffs' contentions that their constitutional rights were infringed upon by school authorities, the court stated:

> Since confusion and anarchy have no place in the classroom, school authorities must control the behavior of their students. If a student's dress is lewd or his appearance is a studied effort to draw attention to himself, his presence is disruptive—such behavior is no different than verbal rudeness.
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> . . . .
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> One of the most important aims of the school should be to educate the individual to live successfully with other people in our democracy. Since the school authorities, by legislative grant, control the public educational system, their regulations play a part in the educational process. . . . [S]ociety expects public education

3. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966); Tinker v. Des Moines Independent Community School Dist., 258 F. Supp. 971 (S.D. Iowa 1966); Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923); Board of Directors of Independent School Dist. v. Green, 147 N.W.2d 854 (Iowa 1967); Leonard v. School Comm., 349 Mass. 704, 212 N.E.2d 468 (1965); Watson v. Cambridge, 157 Mass. 561, 32 N.E. 864 (1893); Stromberg v. French, 60 N.D. 750, 236 N.W. 477 (1931). *See also* 37 COLO. L. REV. 88 (1965).
4. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966); Board of Directors of Independent School Dist. v. Green, 147 N.W.2d 854 (Iowa 1967); Leonard v. School Comm., 349 Mass. 704, 212 N.E.2d 468 (1965).
5. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).
6. *Id.* at 748.
7. Blackwell v. Issaquena County Bd. of Educ., 363 F.2d 749 (5th Cir. 1966).
8. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).
9. Ferrell v. Dallas Independent School Dist., 261 F. Supp. 545 (N.D. Tex. 1966).

> to concern itself with building young citizens as well as teaching the "3 R's."[10]

Many jurisdictions, including Georgia, recognize the broad discretionary powers of school authorities.[11] Where a student's dress—whether it be his hair,[12] metal taps on his shoes,[13] make up,[14] arm bands,[15] freedom buttons[16] or the like—is disruptive to school discipline, school authorities may use reasonable measures to the extent of suspension or expulsion to regain discipline.

Attempts have been made to test the validity of regulations restricting student dress in at least two Georgia cases, but both were decided on procedural issues leaving this issue without precedent in Georgia.[17]

The courts seem reluctant to rule on school regulations which restrict student attire devised in good faith and incorporated into the school administration to maintain efficiency and order. Just as courts are reluctant to transgress on the discretion of school authorities as to the reasonableness of their regulations, school authorities should be reluctant to invade the discretionary domain of personal taste without first considering, "the customs of the community, the purpose of the school, the needs of young people, the influence of the action upon future discipline and well-being of the school and the legal obligations and limitations imposed upon the school."[18]

In the Alabama case of *Mitchell v. McCall*,[19] the court affirmed the right of a student not to wear the prescribed outfit for physical education where such attire offended her religious beliefs. In so holding the court stated, "It is precisely every citizen's right to be a 'speckled bird' that our constitutions, both state and federal seek to insure."[20] Previously mentioned cases clearly indicate, however, that it is not, at least, every student's right to be a "speckled bird" where such attire disrupts the decorum of the nest.

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10. *Id.* at 551-552.
11. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923); Patterson v. Boyd, 211 Ga. 679, 87 S.E.2d 861 (1955); Keever v. Board of Educ., 188 Ga. 299, 3 S.E.2d 886 (1939); Leonard v. School Comm., 349 Mass. 704, 212 N.E.2d 468 (1965).
12. Davis v. Firment, 269 F. Supp. 524 (E.D. La. 1967); Ferrell v. Dallas Independent School Dist., 261 F. Supp. 545 (N.D. Tex. 1966); Leonard v. School Comm., 349 Mass. 704, 212 N.E.2d 468 (1965).
13. Stromberg v. French, 60 N.D. 750, 236 N.W. 477 (1931).
14. Pugsley v. Sellmeyer, 158 Ark. 247, 250 S.W. 538 (1923).
15. Tinker v. Des Moines Independent Community School Dist., 258 F. Supp. 971 (S.D. Iowa 1966).
16. Blackwell v. Issaquena County Bd. of Educ., 363 F.2d 749 (5th Cir. 1966).
17. Matheson v. Brady, 202 Ga. 500, 43 S.E.2d 703 (1947); McCaskill v. Bowers, 126 Ga. 341, 54 S.E. 942 (1906).
18. A. FLOWERS & E. BOLMEIER, LAW AND PUPIL CONTROL §4.4 at 85 (1964).
19. 273 Ala. 604, 143 So.2d 629 (1962).
20. *Id.* at ___, 143 So.2d at 632.