

Mr. Sharber

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON JUVENILE JUSTICE

A HEARING TO EXAMINE

CRIME AND VIOLENCE IN THE SCHOOLS

- - -

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Important

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Mr. Shanker
Crime + Violence in Schools
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STATEMENT OF ALBERT SHANKER, PRESIDENT,
AMERICAN FEDERATION OF TEACHERS

Mr. Shanker. Thank you. I certainly appreciate you putting me on early and I'm sorry that I have had this very longstanding commitment; when I give my word, I do not like to break it. So thank you for helping me keep it.

Our written testimony will be modified. I have been out of the country for almost a month and got to see it yesterday. It needs some additions to it, so we will, within a few days, have an amended statement.

[Material referred to follows:].

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1 Mr. Shanker. I would like to just spend a few minutes
2 on this very serious issues.

3 First, I would like to say that ^{school discipline} it is a very serious
4 issue. It has come up as number one in the Gallup Polls
5 ~~now~~ for about 14 years. We do considerable polling of ^{our}
6 teachers throughout the country and we find that it comes
7 ~~The discipline problem should also be looked at in light of the fact that~~
8 out number one in practically all the polls. And we are
9 about to face a serious nationwide teacher shortage,
10 especially if we demand any minimum level of quality in
11 terms of testing ^(prospective teachers for) in expertise of subject matter.

12 ~~And I can tell you that there is one thing that~~
13 ~~will either keep~~ ^{if} teachers ~~out or drive them out right~~
14 ~~away and that is that if they~~ ^{who} know their Shakespeare and
15 their Dickens and their algebra and ~~they~~ walk into a
16 classroom and find that their main ^{job} problem is to be
17 police men and women dealing with either problems of violence
18 or serious disruption, we are not going to keep them very
19 long.

20 Now, I was shocked this morning to see that there was
21 some testimony yesterday, including one bit of testimony
22 by another teacher organization, saying that things are
23 getting better. ^{NO #}

24 I do not believe that they are getting better. I think
25 they are staying about the same. And the first point I
would like to make is that statistics in this area are

1 very unreliable. There is no systematic nationwide method
 2 of requiring reporting. And, as a matter of fact, there is
 3 a good deal of pressure placed on school personnel not
 4 to report incidents of violence. After all, the reputation
 5 of a school depends, to some extent, on whether there is
 6 law and order in the school.

7 And when teachers report violence, very frequently a
 8 principal will turn around and say, "did you provoke it?" a
 9 That's another way of saying, "if you are going to trouble me with this
 10 thing and give the school a bad reputation, why, you are
 11 going to be in some difficulty yourself." NO #

12 And you can hardly blame the school administration for
 13 taking an attitude like that, For example because if you are a principal
 14 of a large high school, 20 let us say, 2000 or 3000 students
 15 and only 1 percent of your students is engaged in violence,
 16 and if each time you try to pursue those 20 or 30 students
 17 you had to spend a half a day with a lawyer, and then go to court
 18 for two or three days, you could spend more than half of
 19 your school year as a principal in court, You might also and then know
 20 that at the very end the judge is just going to decide that
 21 the best thing to do for the child is to send him right
 22 back to your school anyway.

23 So the statistics are very unreliable. What we do
 24 have and where we feel it is accurate--it goes down a little
 25 one year and up a little another, and the variations of up

1 ~~and down~~ cannot be used as any signs of optimism or
 2 pessimism; they just have to do with variations in the
 3 reporting procedures.

4 Now, another point I would like to make is that we
 5 do have competition for public schools in this country.
 6 There are private schools and there are proposals to
 7 give public assistance to those private schools. ^{And} I can
 8 ^{that if the issue of safe schools is} think of no single item which if not dealt with effectively,
 9 ^{he} will result ^{will be} in the demise of public education in this
 10 country.

11 I think ^{that} if you were to poll parents out there--not
 12 those who want religious instruction for their children, ^{for}
 13 they have a special reason, ^{but} if you poll those other
 14 parents who made a decision to send their children to
 15 private schools, ^{air} I think very high on that list ^{of reasons for choosing private education} would be
 16 the safety of the child ^{and} ^{if} the second thing ^{and} closely related
 17 ^{reason would be} is that there is an atmosphere of learning ^{that is} in terms of
 18 orderliness.

19 Now, I would also like to say that while I do not believe
 20 that the solution that the President of the United States
 21 is offering makes very much sense, ^I I do not know of any
 22 teachers or principals in this country who fail to take
 23 action against a child because they are afraid that some
 24 sort of counter-legal action will be taken against them.
 25 I really think that that is pretty much of a non-issue.

However,

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I do think that it is very good and very important that the President of the United States has spoken up on this issue. I wish governors would speak up on it. I wish more members of Congress would do it. I wish superintendents of schools would do it. I wish ^{and} leaders in the business community would ^{do it.}

Discipline is a major top problem in terms of polls and in terms of teachers leaving, ^(schools) ^{get} and there is an atmosphere of silence around this issue because--you know--^{that} it is very much like the law and order issue ^(one that surrounded the) of the late sixties and early seventies. ^{no #}

Somehow, somebody has gotten the idea that if you talk about law and order in the schools, you have to be a conservative; and that if you are a liberal, you keep your mouth shut and talk about the underlying causes ^(of the problem) and that sort of thing.

Well, nonsense. Nobody likes to have ^{his or her} their children beaten up or hurt. Nobody wants teachers beaten up or hurt in schools. Everybody wants action to be taken. Nobody believes that the time of an entire classroom and of all the children of a teacher should be taken up with one child who is constantly yelling, screaming, throwing things. This is not a liberal or a conservative issue. It is a question of how to intelligently administer schools and deliver an educational service to the overwhelming

1 majority of our children.

2 ~~And whether we concentrate on the rights of one child~~
3 who ^{are} ~~is~~ sick or ^{disturbed} ~~distrubed~~ or something else, I am not
4 saying we should abandon ^{those children} or do nothing for
5 them, ^{The question is} ~~but~~ whether we ^{ought to} spend all of our time keeping that
6 child in a setting where that child is not ~~getting any~~
7 learning and where everyone else is prevented from learning
8 as well.

9 ~~Now, there are a number of~~ ⁹ I just briefly want to
10 make a few distinctions here. First, we ought to distinguish
11 the issue of violence from the issue of disruption. ~~Violence,~~
12 ~~a very important issue~~ ^{not the major problem in schools.} violence is a very important issue,
13 ~~but that is not~~ ^{it is} we have violence on the streets;
14 we have violence in our transportation systems; we have
15 some of it in the schools. ^{no 7}

16 ~~And the violence issue is treated no better and probably~~
17 ~~no worse in the schools than it is in the rest of our~~
18 ~~society. It is an overall problem.~~

19 The major problem that we ^{do} have in schools is the
20 student who is so disruptive. He is not hitting the teacher.
21 He is not beating up the other child, ^{Rather he is the} ~~but~~ one child in a
22 class or 25 or 30 or 35 who is yelling and screaming and
23 jumping around, who takes 20, 30, 40, 50 percent of the
24 time of the class and the teacher and prevents very much
25 from going on. no 7

no #

1 ← From the point of view of educational effectiveness, ~~not~~
2 not from the point of view of ultimate seriousness to the
3 victim, ~~but from the point of view of educational effectiveness,~~
4 the question of serious disruption is the one that we
5 ought to be dealing with.

6 Secondly, I believe that the Congress ought to be
7 considering not whether students should or should not have
8 due process rights, but the question of whether the
9 procedures now used and the type of due process has ^{ve} _^
10 consequences which are far beyond those which the courts
11 originally thought would occur. ~~no #~~

12 That is, if principals and teachers feel that there is
13 no point in taking any action against a student who ^(seriously misbe) behaves
14 ~~in this way,~~ because ^(the procedure) it is so time consuming and so expensive,
15 ~~and even if you find~~ ^{and if} at the end of it ~~that~~ the student was
16 ^{found} ~~guilty,~~ ^{yet} there is no other place to put the student but right
17 back in the same school, then ~~the entire process is~~ you have
18 not really put in a due process provision for the child.

19 We may have gone so far as to create an atmosphere of
20 total exasperation and demoralization ~~saying there is no~~
21 ~~point~~ ^{if} in using the process because the costs of using it and
22 the consequences are such that it is pointless. I think ^{Here,} that
23 ~~the~~ ^(is not) not the question of should there or should there not
24 be due process, ^g but the question ^s of ^(are rather) what are the procedures,
25 what happens, what are the costs in terms of time, in terms of

1 money, what happens to the administration of the school
 2 when a large number of people in the school have to involve themselves
 3 in this? And does this ultimately amount to a situation
 4 where no matter what the student does, nothing is going
 5 to happen to him anyway? For in such a case, no

6 And not only does that student learn a bad lesson, but
 7 all the other students do as well.

8 And, third, I think that we must find a way in which
 9 students who are constantly disruptive, and, of course, those
 10 who are violent, also, can be removed from the normal school
 11 setting for the period of time in which their case is
 12 under consideration. no

13 If we cannot do that, then I think that the public
 14 schools will become the schools only for those children
 15 whose parents cannot afford an alternative to take their children elsewhere
 16 or for those children who will not be taken by the private
 17 schools.

18 We have had a recent poll, where parents across the
 19 country were asked, "if you had a tuition tax credit of
 20 \$150, 250, 500, would you be most likely to take your
 21 child or fairly like to take your child out of the
 22 public school and put him into a private school?" The
 23 answers were quite shocking. Forty-four no

24 44 percent of Hispanic parents in this country sample said
 25 that they would be quite likely to take their children

1 out of public schools; 36 or 37 percent of black parents, ^(said so)
 2 The smallest percentage of parents, ^(who would switch) were white, middle-^{represented}
 3 class parents in suburbs where the ^(school disruption) problem is not as great
 4 and where children who have ^{such} these disturbances are probably
 5 given ^(sent for) private help by their parents or ^{bow} some other community
 6 help. ~~But this is a very serious problem.~~ ^{The poll suggests that} And the big
 7 ^{advantage} thing that a private school can ~~say to a parent and can~~
 8 offer that parent ^s is I can ^a guarantee that if a ^{disruptive} child like
 9 that is in ^(their child's) his class, that child will be gone very soon.
 10 Your child is going to get an education.

11 Now, I think that most of the problems, not all, but
 12 80 to 90 percent of the problems of disruption in our
 13 schools can be solved by the school systems themselves. And
 14 I think they ~~come about~~ ^{don't} because of poor educational planning
 15 and strategy.

16 I am not talking now about the really sick kid, the
 17 really disturbed kid, the totally violent kid, the kid
 18 from a background and family which that child has not overcome.
 19 ~~There is a certain percentage of those.~~ ^(of such children) That percentage is
 20 rather small.

21 ^(Rather) The biggest problem we have ~~got~~ is this: ~~we have~~ a
 22 child who enters, let us say, kindergarten or first grade,
 23 and for whatever reasons the child does not learn very much
 24 the first four ^(of school) weeks ^{= weeks} and because the child did not learn
 25 very much in the first four, he does not quite understand

1 what happens in the next four weeks. And then he does
2 not learn much of what happens in the next six weeks. ~~And~~
3 before you know it, that child enters the second grade and
4 half of the children or three-quarters of them are starting
5 to read and to write and to count, and that child then
6 falls further behind, ~~in the third grade.~~ *Soon, not*

7 ~~And before you know it,~~ that child is in the fourth
8 or fifth grade and still cannot read, cannot write, cannot
9 ^{and} count. What does that child now think about himself or
10 herself? "I am stupid. I spent five years trying to do
11 this and I did not learn. I am never going to learn it.

12 ^{to} ← The other kids sitting around me are doing it. That
13 teacher, by asking me to read and to write and to count
14 is practically ~~is~~ asking me to do the impossible." You
15 might as well ask Al Shanker to go out to California and
16 compete in the Olympics a couple of months from now.

17 ~~And~~ ^{if} if you ask me to do that I can tell you how I would
18 feel, and I know how those kids feel when at that point
19 they are asked to do something and they no longer believe--and
20 they are probably right, ²¹ that they can make up four or
21 five years of lost time.

22 Now, our basic problem is that we wait too long. We
23 wait until somebody is ~~so~~ far behind, and then in junior
24 high school or high school we put in some sort of a remedial
25 program and say, ²⁶ now, Johnny, you catch up, with 10 years

of deficiency. ”

How many of us know adults who would catch up with 10 years of some deficiency in some area or even believe that they could? Now, at that point, in the fourth or fifth grade, many of those children kind of tell the teacher. They may not say it verbally, but they get the message across. They say, now, listen, I cannot do this stuff that you are asking everybody in this class to do.

You leave me alone; I will sit back here and I will either sleep or read a comic book. You leave me alone and I will leave you alone because I am a good kid. Or they will be so angry and so frustrated and so filled with bitterness and embarrassment at not being able to compete with the others that they will start yelling and screaming and throwing paper airplanes and doing other things.

Now, how do we solve this problem? Well, the way you solve it is 80 to 90 percent of these students, if somebody would reach them in the fourth week, in the eighth week, in the 12th week, in the first year and the second year--and I am not talking about hiring hundreds of thousands of teachers to hold children's hands individually.

Suppose that we had talented college students or even gifted high school students come into school as tutors? Suppose that every three or four weeks we picked out those students who have fallen behind one or two or three or four

1 weeks and gave them some tutorial help? Suppose we did
2 something with the parents of those children to teach
3 them how to read a story to those ⁱⁿ children, how to ask
4 questions, how to watch television together, how to do
5 things which will bring them up, ^{because} ~~because~~ ^(A. in sums) the greatest
6 cause of disruption in schools comes from those children
7 who have given up hope ~~on themselves~~ that they can learn
8 or do anything. ^{no}

9 So this whole business ^{is} about ^{to} trying to change
10 Supreme Court decisions and trying to do this and that,
11 ^{has} those things weigh in about one or two or three or four
12 percent of the cases.

13 The big problem ~~that~~ we have is ~~that we are not doing~~
14 ^{our failure to do} the job at the time it can be done, at the time when
15 the child still has faith and confidence, at a time when
16 it is very cheap to do it, at a time when we can be
17 successful. ^{no}

18 ~~And~~ anybody who talks about solving this problem
19 without ^{talking about} reaching children early enough and taking the
20 80 or 90 percent who could make it and then concentrating
21 our efforts on the hardcore problems, ~~anybody who does~~
22 ~~not approach it that way,~~ (I think) is just scratching at
23 the surface and ~~is~~ not dealing with the problem when it
24 is easier to deal with. ^{it.}

25 ~~One other point and that is that~~ ~~one final point,~~ and

1 that is that at grade four or five there are now some
2 children who have not made it. ^{consequently} And I do not think we should
3 keep them in ^{regular} normal school settings for the rest of their
4 lives. ^{no}

5 You know, it is hard even for adults to sit down at
6 8:30 or 9:00 o'clock in the morning and ^{stay} sit still in one
7 seat and keep quiet until 3:00 in the afternoon. I do not
8 know of many teachers who can do it. And yet that is what
9 we ask of a first-grade child and a second-grade child. And
10 if the child starts moving around or jumps a little, we say
11 that child is disturbed or disruptive. Well, some kids
12 cannot sit still that long.

13 They cannot listen that long. They cannot keep their
14 mouths shut that long. That does not necessarily mean they
15 are evil children or terrible or something else. There is
16 no reason why for those children where we have tried to
17 help them in the kindergarten, ^{the} first, second, third, and
18 fourth grade, and ^{but who} they did not learn with a blackboard and
19 a teacher and with books, why we cannot try some sort of
20 other settings.

21 ^{# let me give you an example.}
22 In a previous life, I was a volunteer leader in the
23 Boy Scouts and I was a Boy Scout myself and later became
24 a ^{volunteer} leader in the Boy Scouts. And I remember quite a few
25 youngsters coming into the Boy Scouts who did not learn
very much in school. But the minute they came into the

1 Boy Scouts ^{and} they wanted to become a Second Class Scout
2 and they wanted to become a First Class Scout and they
3 wanted to take a merit badge, they all of a sudden learned
4 how to read certain words. They learned how to read a
5 compass. They learned how to make a map. They learned
6 how to read a recipe so they could do their cooking, and
7 so forth.

8 And we have all seen that sort of thing. The Army
9 has seen that sort of an experience. People who have
10 gone to work and did not learn much at school learn things
11 on the job. ^{no}

12 So I think that one of the things that we ought to
13 do is ^{for children who are} somewhere around grades four or five say that if
14 there ^{and} are children who are so uncomfortable in a ^{regular} school
15 setting, let us develop other types of educational settings
16 for those students, rather than keep them in the settings
17 where they obviously are not going to be able to function.

18 I think that those are the key points I would like to
19 make. I would be happy to respond to any questions if you
20 have any.

21 Senator Specter. Well, Mr. Shanker, we thank you
22 very much for your testimony. The suggestions you have
23 made about the tutoring and the parents, I think, are
24 obviously excellent. That is far beyond the role of what
25 the federal government can do.

1 You then isolate a narrower problem. And my first
2 question to you is that as to the narrower problem, do
3 you think that there is a role that the Congress and the
4 federal government can play with some corrective legislation?

5 Mr. Shanker. ~~I think that there -- well,~~ first, I
6 think that if ~~students are going to receive--~~ students who
7 are accused of committing some violent act are going to
8 receive legal assistance to pursue their case--I am not
9 arguing against that--then ~~I think that~~ school districts
10 ought to receive legal assistance, too. no #

11 If the person accused of committing a crime--in quotes
12 and sometimes not in quotes--is to receive federal legal
13 help, then why should not school districts be given in ~~a~~
14 sense assistance to set up school district attorney's
15 offices and prosecuting offices?

16 I think that there is an inequality in what the federal
17 government is now providing. If you are going to have
18 an adversarial system and if you are going to fund only
19 one side of it, you are going to have an unequal system.

20 Senator Specter. Well, suppose the issue arising with
21 the student is not a criminal charge, but is only a school
22 disciplinary matter. To my knowledge, there is no federal
23 right for that kind of a student to have legal counseling
24 or any right for the state to provide counseling.

25 Mr. Shanker. No, but there might be certain rights

1 under the Education for All Handicapped Act. For instance,
 2 if the disruption^{ve behavior} of that student is viewed as being
 3 part of an emotional handicap, you may have some requirements
 4 that that student be mainstreamed, rather than separated,
 5 if he's viewed as a handicapped student.

6 Senator Specter. But I know of no rights which give
 7 that kind of a student even under that circumstance the
 8 right to counsel in a school disciplinary proceeding.

9 Mr. Shanker. That is true, but they do have a right,
 10 though, to a long series of hearings in terms of their
 11 placement.

12 Senator Specter. Well, I am about to come to that. But
 13 as to the right to counsel, the federal requirements evolving
 14 from Gideon versus Wainwright in 1963 have been once hailed
 15 into court. And that has been expanded in terms of felonies,
 16 misdemeanors, et cetera.

17 Mr. Shanker. Right.

18 Senator Specter. But I know of no right that a student
 19 would have to counsel, provided either at state or federal
 20 expense. And then we come to the question which you have
 21 quite properly raised, and there are two decisions by the
 22 Supreme Court, which I would be very interested in your
 23 views on and I am sure Senator Grassley would be, too.
 24 One of them is the 1974 decision of the Supreme Court in
 25 Wood versus Strickland where the Supreme Court said that

1 school officials would be liable under section 1983 if
2 they knew or reasonably should have known that the action
3 they took was within the sphere of official responsibility.
4 Now, that raises a question as to what level of conduct
5 there ought to be for liability.

6 I do not believe anybody is saying, as you have outlined,
7 that there should be no area of liability. If you deal
8 with a judge who makes a decision, he is absolutely immune
9 from liability with some very rare exceptions not worth
10 talking about here. You talk about a Senator and what we
11 say in this proceeding or what you say, there is absolute
12 privilege.

13 If you talk about newspapers, there has to be a showing
14 for civil liability for malice or reckless disregard, which
15 is equated with malice.

16 Now, the question is: given a teacher's official
17 responsibilities or quasi-official responsibilities, should
18 they be held to the very base, lowest standard for civil
19 liability which is now imposed? That is negligence or
20 knowledge or reason to know, which is a bare negligence
21 standard.

22 And the question is: should that be modified to
23 require that there be some reckless disregard, as say in
24 Sullivan/New York Times standard or some of the newspaper
25 cases?

1 Mr. Shanker. I do not consider this a serious problem.
2 That is, I think ~~the view~~ the view is that because of
3 the standard that now exists ~~that~~ there are many teachers
4 or administrators who are afraid to take action because
5 they are afraid of the consequences. I just do not think
6 that is true.

7 Senator Specter. YOU think that the standard for
8 civil liability is not a serious impediment to teacher action?

9 Mr. Shanker. That is right. I do not see any set
10 of teacher or administrative victims out there who have
11 taken action and then action was taken against them. I am
12 sure that we would be reading about all the cases of the
13 poor teacher ~~and~~ principal who acted in this way and
14 then was hauled into court. Where are they?

15 Senator Specter. How about the issue of uncorroborated
16 complaints? That is a question which is very troublesome
17 in police misconduct cases, for example, where it is one
18 on one, a young child against a teacher where only two
19 people are present.

20 Do you think that there ought to be some standard of
21 at least some line of corroboration before that complaint
22 is processed?

23 Mr. Shanker. I think the question is what kind of
24 complaints are you talking about? If you are talking about
25 action on the part of the student, let us say, that is,

1 criminal type of action, then I think that the kinds of
2 evidence you require probably ought to be closer to what
3 you require in the outside world in criminal cases for adults.
4 I think if you are dealing with questions of disruption,
5 educational placement, removal, or something like that,
6 I think it ought to be much, much looser, ^g because I think
7 that if you cannot make--I think there you ought to--I think
8 at one ^{Hot} end you ought to get very close to the school and
9 teacher being in loco parentis. In the other case you
10 ought to have very strong rights because you are dealing
11 with very, very serious issues.) No #

12 But if the school is strapped with a series of procedures
13 on every minor ^{disruptive} movement of a child from one classroom to
14 another or ^{from} one teacher or one school or something like that,
15 on the basis of disruption, you cannot operate the school.

16 Senator Specter. Well, in a case of in loco parentis,
17 standing in the position of the parent, the parent can
18 spank the child. You cannot go to far lengths of child
19 abuse without being subjected to the criminal process, even
20 for a parent.

21 Would you think that that far, spanking would be
22 appropriate or---

23 Mr. Shanker. No, we do not advocate that.

24 Senator Specter. How far would you go in loco parentis?

25 Mr. Shanker. We do not want to prohibit ^{spanking} it either. That

1 is a local matter. There are a few school districts that
2 like it and ~~if~~ the people there like it, ^{to} why we do not
3 happen to think that that is very much of an educational
4 answer, at least for a school.

5 Senator Specter. But how far would you go in permitting
6 the teacher to stand in the place of the parent?

7 Mr. Shanker. Well, in terms of immediate, ~~disruptive~~
8 ^(of disruption) problems that come up within a school, I think ^{favor} the
9 idea of removing the child, placing that child in some
10 temporary other facility within the school, ^{go - having} the principal
11 being able to remove the child for a period of time,
12 either from the school or to some other location, ~~I~~ ^o
13 ~~think the main thing is~~ ^{But} the problem of dealing with that
14 child is usually going to be a long term issue. You
15 have a kid with substantial problems. They are not
16 going to be solved with one punishment. They are going to be
17 solved through some course of treatment over a period of
18 time.

19 There are two issues: one is what do you do with that
20 kid; the other is how do you let everybody else learn and
21 let the teacher teach. ~~And~~ what has happened is that to
22 some extent our procedures have said that our first concern
23 has to be with that ^{e / disruptive} child and that child's right to stay in
24 that room or to have reason as to why he is being removed
25 ~~or why~~ ^{and} put somewhere else.

1 And we're forgetting about the other 30 children and
2 the teacher and the atmosphere of the whole school, and
3 we've got it upside down. Somehow we have to have
4 permission to act swiftly in terms of saying, all right,
5 you are making a noise; we will worry about ^{other} things
6 later, but right now you are getting out of this room and
7 maybe out of this school today. ^{NO #}

8 Those kids are going to learn ^{that} the teacher is going to
9 teach. And if we cannot do that, if that kid cannot be
10 removed until we go through a series of things, ^(procedures) then it is
11 all over.

12 Senator Specter. So, essentially what you are saying
13 is the minimal amount of restraint or force necessary to
14 permit the educational process to go forward.

15 Mr. Shanker. Exactly.

16 Senator Specter. But let me take up one more question
17 before I turn it over to Senator Grassley, and that is
18 the issue of due process and the hearings, taken up in
19 case of Goss versus Lopez by the Supreme Court in 1975 where
20 the standard was set down that due process for a student
21 in connection with a suspension of less than 10 days, that
22 the student be given specific notice, either oral or written,
23 of the charges against him, and if he denies, an explanation
24 of the evidence the authorities have and an opportunity
25 to present his version, which essentially sets up a hearing

1 for that kind of, what would be considered a lesser
2 disciplinary problem.

3 What is your view of the scope of that decision?

4 Mr. Shanker. I do not find anything wrong with the
5 decision itself. What I find wrong is the effect that
6 the decision has had on school personnel. I would find
7 it very difficult to argue that we educate our children to
8 live in a democracy by ~~saying that~~ ^{if} somebody can just
9 bounce you without saying what happened and give you a
10 reason. ~~That does not--you know--the requirements there~~ ^{of the decision}
11 do not seem to be extremely onerous. → 10 #

12 However, if you are in a school setting and you are
13 every minute waiting for some kid to blow up and somebody
14 to walk in through the door with some announcement that
15 somebody is collecting milk money and somebody is doing
16 something else and you are a combination performer, trying
17 to hold onto your audience; they did not pay to come in;
18 they are forced to be there every day. They may not enjoy
19 it that much. And you are a psychiatrist and a policeman
20 and a mother and you have all of these roles wrapped into
21 one in a situation where any one of these students at
22 any moment can just change the atmosphere so that you
23 cannot function.

24 Every additional thing that is added tends to paralyze,
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1 ~~tends to prevent you from taking action that you should.~~

2 I cannot in good conscious^{ence} sit here and argue that a child
3 who is about to be pulled out of a school for three or five
4 or 10 days should not have^{be given} a reason, should not have an
5 opportunity to say, well, I agree with it or do not agree
6 with it."

7 But ~~unless we~~^{must} at the same time put some pressure
8 on school administrators and teachers and others to^{and} say,
9 "look, that should not stand in the way of your taking
10 proper action. You still act, but do this^{observe these rules.} It is not
11 any individual^{is failure to act.}. It is the whole process.
12 ^{Let us say} I am a teacher. All right. ^{and Johnny is disruptive.} So you told me that
13 I report it to the principle^{I do.} and the principal says, now,
14 Johnny, you are about to be suspended for five days because
15 you stood up and yelled and screamed and^{Assaulted} ~~curse~~ at the
16 teacher^{and} ~~and threw paper down and broke a glass.~~

17 And then Johnny gets a chance to respond. Now--but
18 ^{Now} if I am the principle^{and} and I know that now this means that
19 Johnny maybe^{and} get some legal assistance, I am going to have
20 to sit down for a couple of hours with a lawyer to talk
21 about what I handle, what I do when I am brought in.

22 ~~And then X weeks from now the child has to come back~~
23 ~~within a short period of time.~~ In a while I go to court and
24 spend a day^{Here} in court; we all know what happens the first
25 day: it is postponed. So that is my day. I come back

1 again. By the time I am finished I have spent maybe
 2 three and a half days as the principal of a school on
 3 one child. There are only 180 school days in a year, or
 4 181 or 82. If I spend three days on one child, what am I
 5 doing? When it is all over, what is that judge going to
 6 do? Throw the kid in jail? No. That is going to make
 7 him a hardened criminal. ^{no #}

8 Throw him out on the street, and not have an education ^{deprive him of}
 9 ^{have him} and do the same things out there? No. What is that
 10 judge going to say? After I have gone through this whole
 11 process, what is going to happen? He is going to say, ^{cc} send
 12 the child back to school. ^{ss}”

13 And you know what I can do? All I can do is say to
 14 the teacher who ^{I have} hit or beaten up or something else,
 15 ^{Q S been} look, I know it is going to be very embarrassing for you
 16 to be in the same school with a kid who poked you in the
 17 face. Would you like a transfer to another school so it
 18 will not be embarrassing. ^{?”}

19 ~~You know~~ you take any little piece of this, like that
 20 Supreme Court decision, ^{and} it is okay. But the whole process
 21 somehow does not work.

22 Senator Specter. Mr. Shanker, I do not think you can
 23 really say that there is nothing wrong with the decision and
 24 then say, but the problem is with the way it is carried
 25 out. As I hear your testimony, you do not like the

1 consequence of the decision. A decision speaks in a
2 narrow parameter, but the reality is the way it is read by
3 other judges, federal district judges, lawyers, other people.
4 And as I hear your testimony, the consequences of the
5 decision are problemsome for the orderly administration of
6 the school.

7 Mr. Shanker. They certainly are.

8 Senator Specter. Senator Grassley.

9 Senator Grassley. Thank you. And I know you have to
10 go at 10:00 and I only have a couple of questions, and if I
11 have some more, I will submit those to you in writing. I
12 would appreciate your response if I have to do that.

13 I understand your thesis of your testimony, and that
14 is that we ought to get to the child at a young age,
15 early on and try to help him at that point.

16 And with that understanding of your thesis, I still
17 want to ask you some questions along the lines of Senator
18 Specter and refer, first of all, to a study by Jackson
19 Tobey, professor of sociology and director of the Institute
20 of Criminological Research at Rutgers University.

21 And he stated that related to the extension of civil
22 rights in the school setting is the decreased ability of
23 schools to get help with discipline problems from the
24 juvenile courts. You have been frustrated with courts as
25

1 an answer to the problem. I know you have stated that
2 several times.

3 In line with what Professor Tobey said, do you find
4 that still to be the case of what I quoted him saying. And
5 specifically do you know if courts have ever given relief?

6 Mr. Shanker. I do not know of courts ever giving
7 relief, and I think that we have had a considerable number
8 of instances--yes, ^{where} we have a hard time getting teachers
9 to press ^{CRIMINAL} charges because they know what is going to happen
10 at the end. <sup>THE JUDGE WILL RETURN THE CHILD TO SCHOOL AND
EVEN TO THE SAME CLASSROOM.</sup>

11 We ^{do} in our newspaper and ⁱⁿ other ways ^{we} say, look, ^{if}
12 something like this has happened and if we are going to
13 develop some order in the schools, we urge you to do that, ^{Take action.}

14 And ^{we} have had a number of occasions where ^a child has
15 committed some serious offense. ^{and} The teacher has pressed
16 charges. They end up in court. And what does the judge
17 do? The judge turns to the teacher and starts yelling
18 and screaming at the teacher saying, you are only here
19 because the union told you to be here and press charges ^{It is}
20 against--I mean, you know, ^{It is} ridiculous.

21 What we have generally told teachers is that when
22 an offense is committed, take action. We have not told
23 individual teachers to go after that child. But we
24 have had some very, very--many of the judges--well, they
25 have ^{two} roles, really. One they tend to forget about.

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And that is if you do not have an educational atmosphere in the school, you might as well close the schools down and accept that they become the custodial institution for disruptive children.

I think many of ^{judges} them feel that their main job is to be social workers. And they are dealing with the poor child who ^{is there.} ^{in front of them.} And they take a look at the ^{his} home background. ^{his} they look at the ^{his} environment. They look at the problems of the child, and if you are dealing with that one child, that is one thing. But that judge is not thinking of the 29 or 30 or 32 other children back ^{in school} there and what happens to their education if that child goes back.

It is too bad that the other kids cannot be in front of that judge ^{along with} and the teacher talking about what happens during the day. The judge is looking at that one child and says, "what can I do for that child?" He cannot think of anything else except send ^{ing} him right back ^{to the school}.

Senator Grassley. My second question deals with a study by the National Insitutute of Education. And this was conducted in '75, '76 of 640 different public secondary schools on victimization.

This survey, as well as a national crime survey, which was conducted or begun in '72, concluded that most school crime, like crime outside the school, was nonviolent. Do you think that recent studies would indicate that this still

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holds true?

The study was done 10 years ago.

Mr. Shanker. Yes.

Senator Grassley. There has been no improvement in it, no change in that?

Mr. Shanker. I think it is about the same. From what we have seen, the only changes that are there could be easily--they could just as easily be attributed to changes in reporting procedures. There are not significant changes.

Senator Grassley. Along the lines of what Senator Specter started out with saying--and I will just ask you for a generalization on this--in the second paragraph of your printed testimony, after you went through what was done in 1977 by the Subcommittee on Juvenile Delinquency, you say, "But while its analysis was good, clearly the federal government did not come up with an adequate response."

Do you--in these areas you really are not looking for the federal government to have much of a response, as I detect from the tenor of your testimony?

Mr. Shanker. Well, the federal government in education has entered in a number of different types of areas. It has entered, obviously, in the civil rights area, which is a major federal concern. And it ^{has} also--^{entered during} taken certain specific emergency types of issues--Sputnik is an example--where they went after certain subjects and the retraining of

1 teachers.

2 ^{so} I believe that ^a ~~in federal aid to education that~~ if ^{role is warranted}
 3 you have a major national problem, which I think you do
 4 here, ^{for example, that in the case} I think ~~the question~~ of creating some special
 5 facilities for youths where school districts have tried
 6 all sorts of alternatives within the regular system, ~~that~~
 7 ~~financing a program of that sort~~ ^{federal aid} would not be out of line.
 8 I would think that some program which concentrates on the
 9 early years as a preventative program; ^{and} in terms of maintaining
 10 achievement standards, ^{would be warranted} by the way, it would accomplish
 11 a number of things at once; not just ^{dealing with} the disruption issue,
 12 but ^{dealing with attracting} you are talking about where ^{or} our future math teachers
 13 ~~are coming from~~ ^{or} scientists.

14 We are talking about ^{this} at the wrong end. We are talking
 15 about imposing graduation standards ^{or} from high school or
 16 improving an SAT score before a kid gets into college. All
 17 those things get determined in the first four years. And
 18 if we want to do all those things, we can do a lot more
 19 than just make pronouncements about giving examinations 12
 20 years later.

21 What we ought to do is take that one short period
 22 of life when we can have a tremendous impact ^{and} at rather low
 23 cost, too. Tutorial programs are not that expensive; ^{by}
 24 ^{by} requiring homework and having some system where ^{by} the kids
 25 can call somebody on the phone to get a little bit of help

1 with it or keeping the school open after school so that the child
2 can get help with that homework if he cannot get it at
3 home. *are all good, inexpensive ideas.*

4 We can get a very high, ~~perhaps a much higher~~ payoff
5 from that sort of an investment, ^{*perhaps higher*} than most of the billions
6 of dollars that are ~~put into~~ have been put into education
7 by the federal government.

8 Senator Specter. Mr. Shanker, thank you very much.
9 We will have some legislation submitted by the administration,
10 which is going to be coming up, and we will doubtless
11 be having more hearings. And we may ask you to join us
12 again or to submit your ideas based on the legislation.

13 But what I would appreciate your doing would be to
14 give some thought to what specific suggestion you might
15 have. I know you have given a lot of thought to the problem,
16 but as you look at the decisions we talk about and their
17 consequences, your insights could be very helpful in
18 trying to carve out an appropriate realm to maintain the
19 civil rights and balance that you have seen from your
20 extensive experience as a teacher.

21 If you would mind stepping forward for a minute, there
22 have been requests for a photographic opportunity, and that
23 will take less than a minute.

24 [Pause.]

25 Senator Specter. I would like now to call on the