Crime, Dress Codes, and the Schoolhouse Door

POINT

False Security:
Style regulations restrict students' rights without addressing reasons for gang violence

As the trumpets sounded for the 200th anniversary of the Constitution of the United States, a small but significant segment of our society was handed a narrower Bill of Rights. In late 1991, the Oakland School District announced that its children would no longer be permitted to wear certain kinds of clothing. Although the dress code is aimed at a broad range of clothing promoting alcohol or drug use, violence, profanity, and various forms of bigotry, the primary focus is gang clothing.

The Oakland gang clothing policy lacks proper deference to competing constitutional rights, and offers false security that something is being done about the gang problem. The failure of the policy to provide definitional standards for gang clothing creates constitutional problems of vagueness and overbreadth, and substantially restricts the students' rights to free association, expression and liberty.

At the same time, the unfettered and unguided discretion given to school authorities means that decisions may be based upon unfounded beliefs, whimsy or personal prejudice. Almost inevitably, the restrictions will result in disproportionate and inappropriate enforcement against minority youth. More fundamentally, the clothing restrictions will not effectively prevent gang violence.

SPEAKING IN CODE

Specifically, the dress code bans "[T]he wearing or possession of clothing, jewelry or accessories, or any manner of grooming, which by nature of its color, arrangement, trademark or any other attribute, denotes membership and/or identification with a gang. No jogging suits will be worn at school as this attire is one of the leading symbols of gang regalia. . . ."

Enforcement of the dress code is in the sole discretion of the school principal or his designee. No guidelines or definitions are provided for the exercise of this discretion. The student and his parents have no recourse to an outside arbiter, and the punishment for repeated violations may include suspension from school.

By enacting the gang clothing restrictions, the Oakland school district understandably hoped to insulate itself from the violence and accompanying tragedy that sometimes extends to playgrounds and school crosswalks. The district based its directive on the Safe Schools guarantee of the California Constitution, Article I, §28(c), and its concomitant obligation to provide a safe and secure learning environment.

Oakland was not the first school district to attempt such a measure. Schools and districts around the state have banned the wearing of particular apparel deemed to be "gang clothing." Some have been content to ban particular colors, while others, like Oakland, have banned entire categories of clothing. Schools in the Los Angeles area have banned blue and red bandannas, shoelaces, belts and earrings for years. Other districts now ban Los Angeles Raiders and Kings jackets. Modesto initially outlawed red and blue headbands, but in an effort to keep up with evolving gang fashion, later broadened the ban to completely prohibit the wearing of hats.

Apart from the Safe Schools guarantee, school authorities have the authority to regulate in-school behavior and other aspects of school life deemed appropriate to their educational mission, through California Education Code §35181 and §48908, and California Code of Regulations, Title 5, §300. Nonetheless, school regulations must accommodate other constitutional value. In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), schools were permitted to restrict liberty interests only to the extent necessary to prevent disruption of the educational process.

GANG STYLE

The difficulty of defining "gang" and

Constitutional Concerns
By Sue Burrell

"gang member" has plagued most legislative and law enforcement attempts to address criminal gang activity. This issue is complicated because gang members spend a good deal of time in typical adolescent activities such as "hanging out" and "partying."

Meaningful definition of "gang attire" is even more difficult because it is inextricably linked to mainstream adolescent fashion. Los Angeles Raiders paraphernalia, now widely worn by gang members across the country, makes up 20 percent of the National Football League apparel sold nationwide. The vast majority of those in Raiders clothing wear it to support their team; to vicariously enjoy the

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team's colorful, tough-guy image; or make a fashion statement in the chic black and silver color scheme. How is the principal to know whether a student is wearing "gang colors" or just wants the Raiders to move back to Oakland?

Moreover, the "gang look" itself is a popular fashion statement in adolescent circles. Law enforcement officials in Southern California have commented on the growing number of boys who emulate the dress and mannerisms of hard-core street gangs. This should hardly surprise anyone who has had contact with adolescents.

Dressing in ways that intimidate and repel persons in authority is a primary rite of passage, whether it is done with purple Mohawks, Madonna-style brassieres, or adopting the look of the Crips, Bloods or F-Troop gangs. Clothing offers adolescents the opportunity for peer group identification that is a necessary developmental part of separating from parental figures and forming a personal identity.

Nor is the commercial value of the "gang look" lost on the fashion world. The manufacturer of Soviet jeans has even used gang attire as an advertising gimmick to sell its product. And, since many of the colors and symbols adopted by gangs are designer labels or sports logos featured on rap music album covers and MTV videos, the separation of "gang attire" from mainstream fashion is hopelessly complicated.

Finally, factor in the rapidity with which gang fashion changes. For example, a recent gang fad of wearing overalls with one shoulder strap hanging down quickly gained mainstream adolescent acceptance.

NAKED REGULATION

Interpreted literally, the Oakland clothing restrictions would leave students with nothing to wear. Police experts interviewed for a March 1991 *Los Angeles Times* article stated that the traditional blue for Crips gangs and red for Bloods gangs (eliminating two out of the three primary colors from the outset) no longer adequately describes gang colors.

Indeed, the Grape Street Crips favor purple L.A. Lakers clothing; the East Coast Crips like to wear New York Yankees navy blue, and the Lime Avenue Bloods enjoy wearing Boston Celtics green. In addition, law enforcement officials have linked Los Angeles Dodgers, Houston Astros, Detroit Tigers and Kansas City Royals caps to specific gangs. Add to this the fact that police guidelines on recognizing gang members often include generic items of clothing such as blue jeans, khaki pants, Pendleton shirts and white T-shirts.

Because "gang clothing" often looks like regular clothing, the danger of discriminatory enforcement against minority

See DRESS CODE page 10

Continued from page 8

youth is great. Although law enforcement has documented the existence of white gangs, the vast majority of gang youth are African American, Hispanic or Asian. It is unlikely that the restrictions will be enforced against a group of Caucasian youth who come to school in Raiders jackets. Those in doubt should consider the following:

- Great America Amusement Park was sued in 1991 for ejecting young, minority males based on a "gang profile." Park employees allegedly confronted them and beat them, arrested them, banned them from the park, ordered them to change clothing, or told them to split into smaller groups. Clothing with sports logos often triggered official attention, but one trio was ejected for wearing matching pajamas decorated with a colorful pool-ball pattern.

- In 1990, African American and Hispanic youths filed a claim against the Los Angeles Police Department after allegedly being detained, beaten and wrongly accused of gang membership during a holiday picnic at a park. An advocate for the group noted that when white kids get together they call it a fraternity or sorority, but when it is black or Latino kids they talk about gangs.

- After a 1989 report that the Crips gang was recruiting on a Benicia school campus, authorities questioned and photographed students who wore blue bandannas to school. The NAACP was outraged that even though the incident was determined to be a prank by sixth, seventh and eighth grade students, the photographs remained in police property.

- From 1988 to 1991, the Los Angeles Police Department conducted "sweeps" of suspected gang members from city streets. Police stopped and questioned anyone they suspected of gang membership, based upon, among other things, how the person was dressed. So many people were arrested during some sweeps that police were forced to set up a mobile booking unit at the Los Angeles Memorial Coliseum. Reports of the sweeps indicated that close to half of those arrested were not gang members.

SELECTIVE ENFORCEMENT

This tawdry public record has clear implications for schools. The law enforcement community, to whom the Oak-

land School District will undoubtedly look for guidance, has made serious errors of judgment in determining gang appearance. Despite the commonly held perception that most poor, minority youth are in gangs, studies show that only a small percentage of youth join gangs, even in the geographical areas where gang activity is the most intense.

Without definitional guidelines to guide the exercise of discretion, the danger of racial stereotyping is great. The Oakland gang clothing restrictions will be inevitably enforced primarily against minority non-gang members. While the district may be correct in assuming that some behavior disruptive to the school environment will be discouraged by the gang clothing ban, the dress restrictions may simultaneously increase the danger of violence to non-gang members who have adopted gang attire as protective camouflage.

Many of the students compelled to comply with gang clothing ordinances live in graffiti-ridden, dilapidated neighborhoods, where gang activity is a daily occurence. For such children dressing in gang attire may be the path of least resistance, a badge of protection against coercion from gangs. Even those who are gang members may have taken that route as the best way to achieve personal security against harassment or attack.

The real predictors of gang behavior are not colors or types of clothing. The indisputable gang risk factors are poverty, social disintegration, family dysfunction, racism, low self-opinion, poor education and job skills, blocked access to mainstream success, and absence of hope for a better future.

ACADEMIC APPROACHES

The schools would do more to eliminate gang-related disruptions by working hard to keep at-risk children in school, through meaningful, satisfying educational programs. They would do more by involving parents and other community leaders in understanding the ways in which gangs fulfill needs that have not been met by family and other social institutions, and by then addressing those needs. The time and energy to be spent policing gang clothing restrictions might be better spent teaching children how to make responsible choices about their clothing, companions and personal safety.

School districts receiving money through the state Gang Violence Suppression Program (Penal Code §13826.65) are already required to provide such a multi-faceted approach to gang intervention. Model intervention programs are also available from the National Youth Gang Suppression and Intervention Project, sponsored by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, in conjunction with the University of Chicago.

In the past decade, law enforcement, prosecutorial and legislative agencies have poured millions of dollars into suppression of gang activity: police gang sweeps, tough anti-gang laws and sentencing enhancements, nuisance and eviction proceedings, parental responsibility laws, and increased police presence. Public officials have proceeded under the assumption that this suppression package would result in a lessening of "the gang menace." But current law enforcement statistics indicate that California now has tens of thousands more gang members than in 1980, and that gang violence continues to increase.

While there is increased recognition that social and economic causes of gang involvement must be addressed, there has been little change in official anti-gang strategy. The gang clothing regulations fit squarely into this well-meaning, but doomed approach to the problems besetting urban youth.

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