

## DUE PROCESS: RETALIATION FOR STUDENT PARTICIPATION IN CIVIL RIGHTS PROTESTS

 DIXON, et al. v. ALABAMA STATE BOARD OF EDUCATION, et al. 

186 F. Supp. 945; 1960 U.S. Dist. LEXIS 3482,

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

August 26, 1960.

[District Court Opinion by Judge Frank Johnson; Fifth circuit opinion, *infra*, with Wisdom and Rives deciding in favor of plaintiffs and awarding injunctive relief (reversing the District Court opinion), and Cameron dissenting]

**PROCEDURAL HISTORY AND COMPLAINT:** This case was brought by six Negro students expelled from Alabama State College, in Montgomery, Alabama, seeking a preliminary and permanent injunction to restrain the Alabama State Board of Education, the members of that Board, including the Governor, and H. C. Trenholm, president of the Alabama State College, from interfering with the plaintiffs' right to attend the College. Plaintiffs invoke the jurisdiction of this Court under 28 U.S.C., §§1331 and 1343. The complaint states that the plaintiffs were students in good standing at the Alabama State College until they entered a publicly owned lunchroom in the Montgomery County Courthouse on or about February 25, 1960, after which and because of which the defendant State Board of Education expelled each of them from the college. The plaintiffs allege that the defendants' action in expelling them was taken without regard to any valid rule or regulation concerning student conduct and was nothing more than retaliation against, punishment against, and intimidation toward them for having lawfully sought service in a publicly owned lunchroom, which service they had a legal right to seek. Plaintiffs also allege that they were summarily expelled, without notice or opportunity to defend against the charges, in violation of their constitutional right to due process.

**FACTS:** On February 25, 1960, the six plaintiffs in this case were students in good standing at the Alabama State College for Negroes, a state operated institution of higher learning for prospective Negro school teachers. Along with 20 other students, they entered a publicly owned lunch grill in the basement of the courthouse in Montgomery, and asked to be served. Service was refused and the lunchroom was closed. "The Negroes refused to leave," and police were called. Later that day, the Governor (acting as chair of the State Board of Education) conferred with Dr. Trenholm, "a Negro educator and president of the College. Trenholm **was advised by** the Governor that the incident should be investigated, and that **if he were in the president's position he would consider expulsion and/or other appropriate disciplinary action.**"

**FEBRUARY 26:** Several hundred Negro students staged a mass attendance at a trial being held in the County Courthouse, involving the perjury prosecution of a fellow student. After the trial the students marched through the city approximately two miles back to the college. **FEBRUARY 27:** Several hundred Negro students staged mass demonstrations in Montgomery and Tuskegee. Dr. Trenholm advised the student body that these demonstrations were disrupting the orderly conduct of business at the college and

affecting the work of the participating students and other students. Dr. Trenholm personally warned plaintiffs Bernard Lee, Joseph Peterson and Elroy Embry, to cease these disruptive demonstrations immediately, and advised the student body at the College to behave themselves and return to their classes. Bernard Lee filed a petition with the Governor, respectfully challenging his directive that Dr. Trenholm dismiss the students who participated in the sit-in at the Court House snack-bar. Lee's petition suggested that the students went to the snack-bar "not as hoodlums, but in the...manner and spirit in which other college...students have done..." to protest racial segregation at places of public accommodation. He explained that the students did not disobey the order of the law enforcement officers, but did suggest that the students would "not bow to tyranny."

**March 1, 1960:** Approximately 600 students engaged in hymn singing and speech making on the steps of the State Capitol. Bernard Lee addressed students at this demonstration, and called on students to boycott the college if students were expelled because of these demonstrations. Investigations into this conduct were made by Dr. Trenholm, the Director of Public Safety for the State **under directions of the Governor**, and by the state Attorney General. **March 2:** The Board of Education met and received reports from the Governor identifying plaintiffs and others as the "ring leaders" of these demonstrations. Dr. Trenholm reported that the demonstrations were having a disruptive influence on the work of the other students at the college and the orderly operation of the college in general, and that he could not control future demonstrations. Without notifying the students formally, or formally charging them under College rules, the Board voted unanimously to expel 9 students, including plaintiffs, and placed 20 students on probation. **March 3:** Approximately 2000 Negro students staged a meeting at a church near the college campus, criticizing the College and the Board of Education. [Note: Judge Johnson's opinion "suggests" that there was no direct evidence of plaintiffs' participation – or leadership role – in any of the demonstrations except the original "sit-in" at the County Courthouse. The Fifth Circuit later affirms such a finding by Johnson, and sees this fact as a denial of fundamental due process].

**DISTRICT COURT OPINION:** Judge Johnson found that the federal court had subject matter jurisdiction over the students' claims, but held at the outset that "the right to attend a public college or university is conditioned upon an individual student's compliance with the rules and regulations of the institution." His second premise was that the State Board of Education has the authority to establish reasonable rules governing students at the College. Those rules provided, *inter alia*, that:

"Attendance at any college is...a mutual decision of the student's parents and of...college. Attendance...is voluntary and...different from attendance at a public school where the pupil may be required to attend...Just as a student may choose to withdraw from a particular college...for any [personal] reason, the college may...at any time decline to continue to accept responsibility for the supervision and service to any student with whom a relationship becomes unpleasant and difficult.... Pupils shall conduct themselves in a manner becoming future teachers in the public schools of Alabama and will be expected to show a spirit of loyalty to the institution.... Pupils may be expelled from any of the Colleges: For willful disobedience to the rules established for the conduct of the schools [;] for willful and continued neglect of studies and continued failure to maintain the standards of efficiency [;] for conduct prejudicial to the school [or] unbecoming a student or future teacher in schools of Alabama [;] for insubordination and insurrection, or for inciting other pupils to like conduct [;] or any conduct involving moral turpitude."

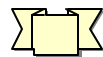
Judge Johnson held that rules reserving to a college the right to dismiss students at any time without divulging any reason other than the general benefit of the institution have been upheld, as long as the dismissal is not arbitrary and falls within the classes specified for preserving ideals of scholarship or moral atmosphere. [Citing *Lucy v. Board of Trustees* (*See* “Eyes on the Prize,” Episode 2)]. Judge Johnson found that federal case law did not provide authority for the students’ contention that the Due Process Clause of the U.S. Constitution’s Fourteenth Amendment required notice of charges and a formal hearing prior to their dismissal for alleged misconduct under the rules of the State Board. Although noting that such decisions had been criticized, Judge Johnson observed that “... where there is no statute or rule that requires formal charges [or] a hearing, as is the case in Alabama, the prevailing [Constitutional] law does not require the presentation of formal charges or a hearing prior to expulsion [of students] by... school authorities.

Johnson found that the sit-ins, and the series of demonstrations, speeches, news releases, petitions, and resolutions that followed were conducted by the students to call attention to the racial segregation of public facilities, but that their conduct “was calculated to provoke and did provoke discord, disorder, disturbance and disruption on the campus of the college...” in violation of college rules. He held that the students’ actions constituted insubordination, and “unbecoming a student or future teacher in the schools.” Under these circumstances, Johnson held, the Board’s response was justified and necessary, and taken in good faith.

**NOTE:** Judge Johnson emphasized that his findings were not to be interpreted as approving or disapproving the “sit-in” demonstrations, or condoning the racial segregation of public lunch-counters.



**DIXON et al. v. ALABAMA STATE BOARD OF EDUCATION et al.,**



294 F.2d 150; 1961, U.S. App. LEXIS 3767,  
UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT  
August 4, 1961

**NOTABLE COUNSEL:** Jack Greenberg, Thurgood Marshall, New York City, Fred D. Gray, Montgomery, Ala., Derrick A. Bell, Jr., New York City, for appellants.

**RIVES, CAMERON and WISDOM,** Circuit Judges.

**ISSUE:** The issue before the Fifth Circuit was whether due process – as guaranteed by the Fourteenth Amendment’s Due Process Clause – requires notice and some opportunity for hearing before students at a tax-supported college are expelled for misconduct.

**HELD:** Yes.

**REASONING:** The Fifth Circuit observed at the outset that the misconduct for which the students were expelled was never definitively specified. Dr. Trenholm, as President of the College, testified that he did not know why the plaintiffs and three additional students

were expelled and twenty other students were placed on probation. The notice of expulsion which Trenholm mailed to each of the plaintiffs assigned no specific ground for expulsion, but referred in general terms to “this problem of Alabama State College,” and explained that the action was being taken at the direction of the Board of Education.

The circuit court interpreted the trial court’s findings to say that “the only demonstration which the evidence showed...all of the expelled students took part in was...the “sit-in” at the lunch grill...in the basement of the...County Courthouse.” The other demonstrations were found to be attended “by several if not all of the plaintiffs.” And, the appellate court held, only one member of the State Board of Education voted to expel the plaintiffs because of their participation in that singular event (Mr. Ayers voting to expel plaintiffs because they violated the law separating the races in public places such as lunch-counters). Notwithstanding the lack of evidence of plaintiffs’ participation or role in the subsequent demonstrations, the Board voted to expel plaintiffs allegedly to prevent further mass demonstrations, violence and disorder (The Superintendent of Education admitted that he believed “demonstrations without the consent of the institution,” justified expulsion).

The Fifth Circuit agreed with Judge Johnson that no statute, or rule of the College required formal charges or a hearing for students accused of misconduct; however, the court held that, according to the President’s own testimony, it was the practice of the College to grant a hearing and opportunity to offer defenses before expelling a student. But more broadly – on the Constitutional question before it – the court held that: “Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved....The precise nature or the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished – are some of the considerations that must enter into the judicial judgment.” [Citing **Cafeteria and Restaurant Workers Union v. McElroy et al.**, 81 S.Ct. 1743 (1961), holding that, although Congress may prescribe conditions for a resident alien’s expulsion and deportation, he may not be expelled from the country without allowing him a fair opportunity to be heard].

In light of the Cafeteria Workers Union case, the Circuit Court held that it is not enough to say that the right to attend a public college or university is not in and of itself a constitutional right. The Supreme Court in the Cafeteria Workers Union case held that a worker cannot summarily be denied access to the site of her former employment simply because she had no constitutional right to be there in the first place. The Supreme Court’s view of due process requires that (even if attending a public college is a privilege granted by the state and not a right) once a student is admitted and matriculates in good standing, s/he cannot be summarily dismissed for alleged misconduct in violation of state rules, without notice and a fundamentally fair opportunity to be heard in his own defense – in the absence of danger to others.

The court held that a student's enrollment with knowledge of the College's rules providing for dismissal without cause cannot be considered an expression of the student's intent to waive notice and a hearing before expulsion. Moreover, even if such were true, the State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process. Indeed, the court observed, Alabama has required that even private associations must provide notice and a hearing before expulsion, in the absence of a "clear and explicit" waiver.

The court found a significant private interest at stake in the case of students subject to expulsion from a public college or university. It held that the right to remain at a public institution of higher learning is vital, since without sufficient education, "the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens." Expulsion not only would interrupt the student's studies at his current institution, but would also prejudice the student in completing his education at any other institution.

The court rejected the Board's reliance on Lucy v. Adams, 134 F.Supp. 235 (D. Ala. 1957), where Autherine Lucy was expelled from the University of Alabama without notice or hearing. Lucy did not raise the issue of an absence of notice or hearing, and where the issue has been raised, other courts, including state courts, have suggested the requirement. Moreover, Professor Warren A. Seavey of Harvard has suggested that "[it] is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a student the protection given to a pickpocket." Seavey, "Dismissal of Students: Due Process," 70 Harvard Law Review at 1406.

**CONCLUSION (ELEMENTS OF DUE PROCESS):** The Fifth Circuit concluded that precedent cases, as well as fundamental constitutional principles support the decision that due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct. The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case, but in a case such as this, due process requires more than an informal interview with an administrative authority of the college. In such circumstances, a hearing which gives the Board or other administrators of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of the student(s) and the college. The court stopped short of requiring a quasi-judicial hearing, with the right to cross-examine witnesses, but suggested that the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or an administrative official of the college, his own defense, including oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board, the results of the hearing should be presented in a report open to the student's inspection.

**DISSENT:** Cameron, J. dissents (remember his basic view of the Fourteenth Amendment), arguing that “the Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interests. He asserts that, where the private interest is a mere privilege subject to the Executive's plenary power, it has traditionally been held that notice and hearing are not constitutionally required. While questioning the majority’s basic interpretation of the Cafeteria Workers Union case, and its reliance on unsettled views of due process in the context of the school setting, he suggests that his real disagreement with the majority is based upon his view that the nature and mission of schools require “... many rules governing the conduct of those who attend them, which do not reach the concept of criminality but which are designed to regulate the relationship between school and the student based upon practical and ethical considerations which the courts know very little about and with which they are not equipped to deal.” In more extreme language, he observes that “...to extend the injunctive power of federal courts to the problems of day to day dealings between school authority and student discipline and morale is to add to the now crushing responsibilities of federal functionaries, the necessity of qualifying as a Gargantuan aggregation of wet nurses or baby sitters.”

Judge Cameron also based his decision that the plaintiffs were properly expelled on his view of the demonstrations, which he characterized as a kind of “mob violence.” His opinion, which seems to justify even the use of fire hoses on demonstrators as a means of preventing confrontation, describes the demonstrations in this case as inciting civil disobedience in the nature of insurrection. Moreover, Cameron disagrees with the majority’s suggestion that evidence of the plaintiffs’ role in the demonstrations was lacking, observing that plaintiffs virtually admitted their role in the entirety of the protests, and their willful disobedience of college rules.

It is noteworthy that Cameron’s opinion suggests his basic view that the Fourteenth Amendment does not justify the application of the Civil Rights Statutes to controversies implicating state functions. Granting the Fourteenth Amendment’s Due Process Clause guarantees to public college students will, he argues, require “wholly unrealistic and impractical” procedures which could make every attempt at discipline “a cause celebre, in connection with which federal functionaries would be rushed in to investigate whether a federal law had been violated.” In sum, Cameron’s dissent in this case is consistent with his basic view of the Fourteenth Amendment (*See* Bass, “Unlikely Heroes,” Chapters 11 & 12).

