

## Schools, Courts, and Students' Freedom of Expression

Roosevelt Ratliff

*How are schools faring as they learn to live with the new judicial affirmations of students' rights, as citizens, to freedom of expression? Does curriculum help students become better acquainted with their rights and with ways to assert these rights?*

The late 1960s and early 1970s will long be remembered as the epochal turning point in the quest by public school students for their constitutional rights. In addition to student activism and the concomitant school disorders, however, we are also unlikely to forget the unprecedented court intervention in school matters concerning students. Many judicial decisions on the constitu-

tional rights of students alerted school people that they were no longer to treat students as wards bereft of rights save those that they exercised vicariously through adults. Some examples were the rulings in *Burnside* (1966), *Scoville* (1970), and *Quarterman* (1971).<sup>1</sup> In its forceful pronouncement in *Tinker v. Des Moines*, the United States Supreme Court asserted:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our constitution. They are possessed of funda-

<sup>1</sup> Full citation of cases as follows: *Burnside v. Byars*, 363 F. 2d 744 (5th Cir. 1966); *Scoville v. Board of Education of Joliet Twp.*, 286 F. Supp. 988 (ND Illinois 1968), rev'd 425 F. 2d 10 (7th Cir. 1970); *Quarterman v. Byrd*, 453 F. 2d (4th Cir. 1971).

mental rights which the State must respect, just as they themselves must respect their obligations to the State. . . .<sup>2</sup>

From their onerous examination of voluminous litigation involving student rights in conflict with school regulations, the courts adjudicated hundreds of cases nationwide. The majority were subsumed under the categories: (a) speech and expression; (b) suspension and expulsion; (c) grooming and dress; and (d) search and seizure.

An example of a sensational (but atypical) case occurred in January 1969, at the Franklin K. Lane High School in Brooklyn, New York. Following the attack of a teacher by three youths, 670 students were expelled en masse. The formal reason given for the expulsions was to relieve overcrowdedness at the school. Ruling on a class-action complaint two months later, Federal Court Judge Jack B. Weinstein found that the students had neither received notification of, nor had any opportunity to oppose, the school's action against them. Their right to due process was abridged. Thus, he ordered the reinstatement of all 670 students.<sup>3</sup>

The Weinstein ruling and others supported the interest of students. There were, however, numerous court decisions that sustained school authority as empowered by the state.

Take, for example, the case of *Baker v. Downey City Board of Education* (307 F. Supp. 517, 1969). The senior student body president and the president of the senior class at Earl Warren High School in Downey City, California, were removed from their class offices and suspended in November 1969 for publishing and distributing an off-campus newspaper that contained, in the panel's words, "multiple vulgarisms." The U.S. District Court for the Central District of California upheld the suspensions of the two students, maintaining that the education process of public schools must be protected and educational programs properly administered.

Given the above background and experiences within the past decade, there is a natural inclination to ask: How fares the student-citizen and the issue of student rights in our schools today? Let us examine some areas that may answer this question.

First, the judicial decisions over the past ten years in one category of student rights—freedom

of expression—provide a source for analysis in determining the overall impact courts have made on the schools.

Second, if we accept the underlying assumption that students must have at least a minimal knowledge of their rights preliminary to their exercise of them, it seems important to consider

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the curriculum and instructional opportunities schools have provided for students to learn about their freedoms.

Third, the recognition of student-citizens and their rights is dependent by and large upon how they are looked upon and treated by school people. Finally, we should consider if school people over the past few years have altered their perceptions of and attitudes toward students.

### Court Decisions on Student Rights

Court cases on the rights of students in school have involved the interest of the individual versus the interest of the state. Representing the former, students and their parents have brought suits in federal courts, alleging that schools contravened their constitutional rights. Representing the latter, school authorities have had to convince the courts of their "reasonable" exercise of authority and that they did not violate the rights of their students.

Generally, when the courts have found

<sup>2</sup> *Tinker v. Des Moines*, 21 L.Ed 2d at 740.

<sup>3</sup> Ira Glasser and Alan Levine. "Bringing Student Rights to New York City's School System." *Journal of Law and Education*, April 1972. pp. 213-14. See also: Jean Strouse. *Up Against the Law: The Legal Rights of People Under 21*. New York: New American Library, 1970. pp. 70-71.

school regulations unreasonable, arbitrary, broad, or ambiguous, or the actions of school authorities immoderate, they have supported students. On the contrary, when the actions of students materially or substantially interfered with the educational process, courts have sustained school regulations and upheld school authorities.

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In 1974, Clayton and Jacobsen identified 158 court cases on student rights; these were heard by the courts from 1960 to 1971. In the category of student expression, verbal, symbolic, and written forms of communication were the key issues in 14 of the cases. Of this number, they found seven cases adjudicated in favor of students and seven in support of schools. They predicted that most future cases would be settled out of court.<sup>4</sup>

Parallel findings of my own research support their study. After a comprehensive examination of 13 court cases on the specific controversy of students' right to the freedom of expression from 1965 to 1975, I discovered six cases decided in support of students; five in favor of school authorities and school regulations; and two wherein courts compromised between students and schools. I concluded that future conflicts involving students and the schools over the constitutional issue of free expression would be resolved (if possible) by the schools. For one reason, such litigation proved time-consuming and expensive. On top of this, educators were demonstrating concerted efforts to avert such conflicts, thereby alleviating the possibility of future conflicts to reach the courts.<sup>5</sup>

The findings of both studies suggest that for the past few years the judiciary has remained divided over the particular issue of student expression. Rulings favorable and unfavorable both to students and schools counterbalance each other.

Similar to the courts, schools also have been divided over this issue. Freedom of expression as a student right still has not achieved full recognition in schools.

Therefore, the total effectiveness of judicial decisions in support of student rights in general must not be overestimated. Courts have made some impact on the schools, most of it through state legislative enactments that many school districts have reluctantly followed. Yet, the response of schools to court decisions has left much more to be desired. In one writer's view, what counts is "the spirit of the law, not the letter of the law."<sup>6</sup> And the "spirit" refers to attitudes, which constitute a more intricate part of the change process.

### Curriculum and Instruction on Student Rights

The goals of school curriculum and instruction traditionally included the cultivation of values for "good" citizenship. Put another way, the purpose of school was to infuse in students the value of becoming responsible, productive, and self-sustained individuals who could cope effectively with problems that they would encounter in their lifetime. To achieve this goal, schools stressed the essential objective for students to know their rights and responsibilities. The problem lay not in the goal, but in the disparity between the goal and school practice. As one part of the problem, schools across the nation have demonstrated a reluctance to provide curricular and instructional opportunities for students to learn about their rights. Today, this instructional area remains extremely sensitive. Many educators view it as difficult, dangerous, and attractive to student cynicism. Many also hold that such instruction would undermine their authority.

<sup>4</sup> Elwood M. Clayton and Gene S. Jacobsen. "An Analysis of Court Cases Concerned with Student Rights, 1960-1971." *NASSP Bulletin*, February 1974. pp. 49-53.

<sup>5</sup> Roosevelt Ratliff, Jr. "Students in School and Court: An Examination of Students' Right to the Freedom of Expression in Public Schools, 1965-1975." Unpublished Ph.D. dissertation, Stanford University, 1977.

<sup>6</sup> Sy Schwartz. "Beyond the Court Cases: Curricular Responses to the Student-Citizen." *Educational Leadership* 32(2): 128; November 1974.

In 1970, a Columbia University team of researchers alluded to the lack of opportunities for students to learn about their rights as one reason why youth viewed schools as basically undemocratic.<sup>7</sup> In another study of approximately 500 adolescents in Northern California, Fox revealed that students needed, as well as wanted, to know more about their rights—instruction in which they apparently had not received in their schools.<sup>8</sup> But the startling evidence is the recent finding of a survey by the National Assessment of Educational Progress, which reported that, from 1972 to 1976, the knowledge of and support for constitutional rights among 13-year-olds and 17-year-olds declined.<sup>9</sup>

Besides the general lag by schools in curriculum and instruction on student rights inferred by these findings, we may attribute the said decline to the tenacious attitudes held by some school people who feel, despite evidence to the contrary, that the less students know about their rights, the better off schools will fare. The costly experiences during the turbulent 1960s counterpose this stance. In other words, just because

schools fail to teach students their rights affords no guarantee nor does it increase the possibility that students will be less likely to challenge school policies and the governance of their behavior or to refrain from demanding their rights. The challenge before school people, then, is how to overcome their apprehension so that schools may become unfettered forums for young citizens to investigate their rights and to inquire the relevant meaning of their citizenship.

The implementation of law studies curricula has helped tremendously in this regard. Many law education programs include materials and activities on constitutional rights that students may apply to their own school situations. If the wide support for law education continues, then there may be an increase in students' knowledge

<sup>7</sup> See: John DeCecco, Arlene Richard, et al. *Civic Education for the Seventies: An Alternative to Repression and Revolution*. New York: Teachers College, Columbia University, 1970.

<sup>8</sup> Karen F. A. Fox. "Correlates of Adolescents' Knowledge of the Legal Rights of Minors." Unpublished Ph.D. dissertation, Stanford University, 1973.

<sup>9</sup> See: *Education Daily* 11(23): 1-2; February 2, 1978.

#### Some Recorded Court Cases on Symbolic Expression

Year	Name of Case	Issue	Court	Court Decision Favorable to:		Students
				School		
1966	Burnside v. Byars	"Freedom" Buttons	5th Circuit			X
1969	Tinker v. Des Moines	Black Armbands	U.S. Supreme			X
1970	Aguirre v. Tahoka	Brown Armbands	N.D. Texas			X
1970	Banks v. Muncie	Confederate Flag	7th Circuit	X		
1970	Guzick v. Drebus	Political Buttons	6th Circuit	X		
1973	New Rider v. Board of Education	Hair	10th Circuit	X		

#### Some Recorded Court Cases on Written Expression

Year	Name of Case	Issue	Court	Court Decision Favorable to:		
				Schools	Students	Both
1968	Scoville v. Joliet Township	Content of Student Paper	7th Circuit		X	
1969	Baker v. Downey City	Obscene Materials	C.D. Calif.	X		
1969	Zucker v. Pantis	Political Advertisement	S.D. New York		X	
1969	Schwartz v. Schuker	Distribution of Nonschool Paper	E.D. New York	X		
1971	Quarterman v. Byrd	Distribution of Underground Paper	4th Circuit		X	
1971	Eisner v. Stamford	Prior Approval of Student Paper	2nd Circuit			X
1972	Baughman v. Freienmuth	Dissemination of Nonschool Paper	4th Circuit			X

of their legal rights in the years immediately ahead.<sup>10</sup>

Another part of the problem with curriculum and instruction on student rights concerns whether schools make provisions for young citizens to use, in a practical manner, the knowledge that they obtain. Informing students about their rights is significant, but inadequate; students derive no appreciable benefit from such knowledge alone. Optimum learning is enhanced when school

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programs afford systematic opportunities for school-related experiences. They may take the form of students deciding disciplinary cases involving the rights of their peers, participating in policy decision-making, or even regulating their own behavior.

### **Changing Perceptions of the Student and Student Rights**

The transformation of schools during the late 1960s and 1970s marked a significant change in the perceptions and attitudes of school people toward students and their legal rights. Influenced by the courts, schools began to manifest increased recognition of the student as a citizen. According to Ladd, one factor that motivated educators to view students differently was the dilemma before them concerning "how to regulate student behavior without being sued for violating students' rights or, if sued, without being overruled in court."<sup>11</sup>

The aversion of educators to legal entanglements over student rights has helped to change their attitudes. Moreover, in my opinion, an equally sound reason has been school people's own volition to make schools more democratic. For instance, many teachers, with a long history of struggle for their own professional and personal

rights, have generally commiserated with students in their efforts to obtain greater freedom in school. What is more, we should not forget that several former college and university students during the student rights movement are now members of the rank and file, bringing with them and in some cases propagating their "freedom for all or freedom for none" ideologies.

Then, too, who should understand students and the problems with their rights better than school administrators? In confrontations with youth over issues on student rights, school administrators, especially as defendants in court, have had to learn as much as they could about students. Not that understanding per se is equated with attitudinal change. But there is evidence that school administrators have not been the adversaries that students often allege them to be. Many are responsible for the increased participation of students in school decision-making and for the experimentation of some schools with shared-power models of governance.<sup>12</sup>

We can conclude that such a change is significant, even if it only mitigates the circumstances that would engender student-school confrontations or subsequent litigation. But more important, it signifies for schools an important step closer to the democracy and social justice of which Michael Apple speaks.<sup>13</sup>

### **Conclusion**

It remains to be seen if schools will acknowledge fully our student-citizens and respect as well

<sup>10</sup> A detailed description of several law projects is found in: R. Gerlach and L. Lamprecht. *Teaching About the Law*. Cincinnati: W. H. Anderson Co., 1975. pp. 23-59.

<sup>11</sup> Edward T. Ladd. "Regulating Student Behavior Without Ending Up in Court." *Phi Delta Kappan* 54(5): 304; January 1973.

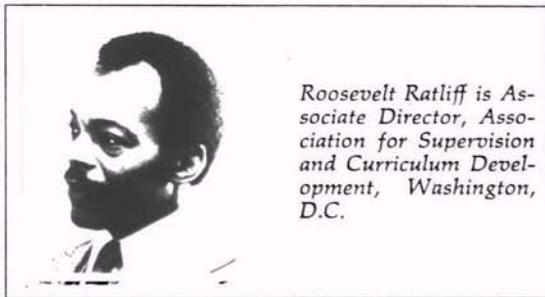
<sup>12</sup> See: Dan Towler. "Students on School Boards." *California School Boards* 34(9): October 1975; James E. Calkins. "Are Your Students Involved in Deciding Crucial Issues?" *Education Digest* 40: December 1974.

<sup>13</sup> Michael W. Apple. "Justice as a Curricular Concern: Legal Mechanisms and Student Rights." *Multicultural Education: Commitments, Issues, and Applications*. Washington, D.C.: Association of Supervision and Curriculum Development, 1977. pp. 27-28.

as safeguard their freedoms. Much has already been accomplished; but there is much still to be done. Some urban schools, for example, appear as concentration camps where one is compelled to display a pass to enter and exit, where tensions abound, and where the security is such that even Seymour Sarason's visitor from out of space would find it dreadful. Understandably, though, school authorities and other personnel, preoccupied with order and control as they are, have enough difficulty just trying to keep such schools open and in daily operation, not to mention extending greater freedom to students. These schools are prime targets for improvement.

Moreover, there are some schools situated in communities that are anchored so profoundly in tradition that the full rights of their students may never be attained; students will continue to be looked upon and treated as "minors" who are incapable of making rational judgments or as innocent subordinates who must undergo protection at all costs. To the good fortune of students, the said schools are comparatively few in number.

Without question, the sensitive issue of student rights promises to be around in the years ahead. Excluding intransigent situations, I believe that most school problems stemming from student rights, despite whether the issue is free expression, due process, privacy, or others, can and should be resolved by the schools. Should school people continue their present attitudes toward the legal rights of students, schools may experience fewer problems than they have in past years. And students, from their own school experiences may learn to value their citizenship. *FL*



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