



1972

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Recommended Citation

Mark R. Shedd, *The Legal Process as a Problem Solving Tool in Education*, 17 Vill. L. Rev. 1020 (1972).
Available at: <https://digitalcommons.law.villanova.edu/vlr/vol17/iss6/4>

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THE LEGAL PROCESS AS A PROBLEM SOLVING
TOOL IN EDUCATION

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FROM THE OUTSET, the history of our nation has been a story of the freeing and empowering of a long line of previously controlled, dominated, and colonized people,¹ including teachers and professors. The break with England and the adoption of the Constitution with its Bill of Rights triggered a chain of actions and events down to the present time. The effect of each series of events and actions, in my view, has tended to open our society and its institutions to wave after wave of peoples, including immigrants, labor groups, and other disenfranchised have-nots. The dynamics of this process have often made it inconvenient and somewhat upsetting for those in power and, in some instances, have led to disruption and even violent resistance. Witness the angry confrontation between federal troops and southern citizens determined to resist school integration, from Little Rock to the University of Mississippi. Conversely, the disappointment of the rising expectations of a people emerging from oppression may suddenly erupt into a conflagration, as Harlem, Watts, and Newark demonstrated in the mid-sixties. On the campus, also, frustration from the slow pace of administrators in recognizing student interest may be fanned into riotous flame by the volatile mixture of skillful agitators and inept enforcement personnel. I believe, however, that the very dynamics of this process have been the real source of this nation's vitality, *i.e.*, the means of our constant self-renewal as a democratic society. It has been a way of persistently re-educating ourselves to the meaning and value of a free participatory democracy.

The past decade has been a particularly excruciating time as several previously colonized minorities have pressed to have the law universally applied rather than affording protection to a particularly preferred group. I speak of blacks, browns, Indians, women, and the young. Since the struggle to reinterpret the laws of our country, in light of the rights and special circumstances of racial minorities and the young, has been waged largely in educational institutions, I have been especially concerned personally, and I might say I bear a few

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1. Illustrative examples would be the Emancipation Proclamation, the extension of voting rights to racial minorities and women, the reduction of the voting age, and the current campaign to reduce the age of minority and to enact the Equal Rights Amendment.

scars as a result of being caught in the crossfire between those who seek the changes and those who demand that we maintain the status quo. Defining and securing the rights of the young, especially, gets to be a very tricky, complex, and difficult problem. It raises many questions and issues that are not easily resolved. Because the law mandates school attendance, it places the schools *in loco parentis*, and because students in school are of varying ages and maturity levels, it is necessary to define in rather special ways the rights and responsibilities of the young.

Recently, the Philadelphia Board of Education adopted a Student Bill of Rights and Responsibilities which attempted: (1) to define more clearly the rights of school students under the law; (2) to clarify the limits on behavior and action of students in the school community — consistent with that order which is necessary to accomplish the educational mission of the school; and (3) to establish orderly and rational means for the redress of student grievances against the policies of the school and the practices of school personnel. I personally believe that the Student Bill has relieved some tensions while, perhaps, generating others. It has educated students about due process in a very real way by channeling youthful energies into ways of improving their own institutions. But interestingly enough, a well-known former law enforcement official has charged the Superintendent of the Philadelphia School System with permissiveness for supporting such folly, and an official of the teachers' union stated that only teachers have rights in the school — students have no rights because they are only in school for a time to be taught and then depart.

Let me cite what I consider to be a few problems and issues that law and education face together as we continue to deal with the fallout from a whole series of decisions — *In re Gault*,² *Tinker v. School District*,³ *Brown v. Board of Education*,⁴ and *Serrano v. Priest*.⁵ (1) Do a student and his parents have a right of access to his records and reports in the school files? (2) What are reasonable codes of discipline and dress? (3) Do the police have the right to enter schools to undertake surveillance or to interrogate students and faculty? (4) What constitutional safeguards should be afforded the student, parents, and faculty? (5) How do the Board of Education and administration deal with the problem of desegregation and busing during the current constitutional crisis confronting the judicial, executive, and legislative

2. 387 U.S. 1 (1967).

3. 393 U.S. 503 (1969).

4. 349 U.S. 294 (1955).

5. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

branches of the federal government? (6) How do we achieve equity in the financing of education in terms of revenue-raising and resource allocation? (7) Is need a factor to be taken into account in determining allocation formulas for school funds? (8) How do we guarantee the rights of the individual student in the school and yet, at the same time, assure the school community safety and freedom from fear of assault, intimidation, and extortion?

Considering the nature of these questions and many others in the current politics of the national administration and the general political climate of the nation at large, I thank God that the courts are still part of the decision-making process regarding education, particularly in the area of school finance, in the area of school desegregation, and in the personal liberties and civil rights area. I fully anticipate that the law will continue to contribute substantially toward reshaping national education policy in the years ahead.