

The School Law Blog: Judge Posner on School Law and 'Spoiled Kids'

A prominent federal appeals court judge said in a recent speech that courts should defer more to school administrators, and that students [today](#) are "spoiled and coddled" and should "learn to roll with the punches" and not be hypersensitive about political or religious messages in schools they might find offensive.

"Modern American kids, it seems to me, have excessive self-esteem," said Judge Richard A. Posner of the U.S. Court of Appeals for the 7th Circuit, in Chicago. "They're spoiled and coddled. Many of them have very aggressive parents."

The judge, a conservative nominee of President Ronald Reagan who is considered one of the leading intellectuals of the federal appeals courts, spoke [Nov. 11](#) in Chicago before the national conference of the Education Law Association. That group is made up of professors who teach education law, as well as practicing lawyers and school administrators.

Judges have all been through school, of course, but "we don't have any systematic knowledge of the educational process," Posner said. "We certainly have no experience running schools. The experts are the school administrators. They know a lot more about it than judges. It seems to me judges ought to be very cautious before they try to displace the authority of the school administrators."

The judge suggested some school litigation was the result of "hypersensitive" reactions by students to what they face in school.

"It seems to me you have to take a certain amount of buffeting to live in society," said Posner, who recounted that in the early 1960s he took the bar exam in a room at Fordham University, a Roman Catholic institution in New York City, where he was greeted by a large crucifix. It was a "sad-looking Jesus Christ," said Posner, a graduate of Harvard Law School. "What do you expect? It's a crucifixion. He's looking down on us balefully. I'm not religious. Some people would be offended: 'This is a secular activity, what are they doing confronting us with this?' I think people should roll with those particular punches."

This includes not being offended by displays of the "silly" Ten Commandments, Posner said, or by prayers at public school events. Non-believing students should just let their minds wander, he suggested.

Posner's nearly hourlong remarks were wry and funny, and the judge recounted some of the school cases he has helped decide. In one, Posner actually ruled against school administrators in the case of suburban Chicago high school students who wanted to wear T-shirts that said "Be Happy, Not Gay." The shirts were a response to the National Day of Silence, an effort to show support for gay students and gay rights. Posner was in the majority in two decisions by three-judge panels of the 7th Circuit that ruled in favor of the students who wanted to wear the "Be Happy, Not Gay" shirts.

"First of all, these are high school seniors," Posner said in his speech last week. "Since they have to form political opinions, they ought to be exposed to diversity of thought. ... I think it is problematic for schools to try to suppress criticism of homosexuality." Also, school administrators' arguments that the "Be Happy" shirts were a form of bullying were not backed by any hard evidence, the judge said.

The decisions were *Nuxoll v. Indian Prairie School District No. 204*, in 2008, and *Zamecnik v. Indian Prairie School District No. 204*, in 2011.

The judge had a different view when it came to a group of gifted 8th graders at a Chicago magnet school who protested when school administrators barred them from wearing T-shirts that appeared to disparage non-gifted students at their school as "tards," short for "retards."

Writing for the 7th Circuit panel in *Brandt v. Board of Education of the City of Chicago*, in 2007, Judge Posner said the "gifties" were "privileged schoolchildren in a school that contains a majority of nonprivileged children" and they did not "recognize the principal's authority or the legitimacy of the school's procedures."

In his speech, Posner said the case involved "rich kids" with a "sense of entitlement being pushed around by school administrators—'Who are they?'"

The judge later said that it might be possible to devise a rule that children below high school age "do not have free speech rights that can be enforced in litigation."

"You have to draw the line. You can't have 3-year-olds screaming for mommy and saying its protected speech," Posner said. "And you could say that we recognize the expertise of the school administrators. ... It would be nice to have a high standard for suits by schoolchildren against schools." (The judge didn't acknowledge a recent ruling by the U.S. Court of Appeals for the 5th Circuit, in New Orleans, that students in elementary school do have First Amendment free speech rights, which I blogged on here.)

Posner mentioned time and again that school administrators deserve more deference.

"When I was a kid, the notion that children had rights against schools was unknown," said Posner, who is 72. "The notion you could sue a school over grades was unknown, or over discipline."

The judge said he was a bit of a teacher's pet in his school years, and he faced detention only once when he was "falsely accused" of talking in class, or some such infraction.

"It did not occur to me that I could bring a lawsuit over the fact that I was detained in violation of the Fourth Amendment," Posner said. "Now we live in a different world in terms of litigiousness in general. But it's not clear how much society has been improved. Obviously in some areas there have been gains. ... But it's not clear education has been one of them."

- Mark Walsh