

# Where Is Justice in School Aid Decisions?

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In the past few years, the 46 million Catholics of the United States have patiently sought through the democratic process to obtain a fair share of their school taxes. In the last decade, their efforts have been in part rewarded. Legislatures in many states wrote laws offering school aid. The climate has definitely changed.

Lawmakers see the injustice of denying parents the right to send children to the school of their choice and to have a just share in their school taxes. Then, behold, where one would least suspect injustice to be condoned, it is found — in the federal courts.

The federal courts again and again have overturned the acts of the legislators. This concerns us. The mandated Service Law was shot down by a three-judge

court. This concerns us.

These three-judge courts are composed of one circuit judge and two district judges. In the Mandated Service decision the three judges involved were Edmund L. Palmieri, Paul R. Hays, and Morris E. Lasker. Hays and Lasker declared the Mandated Service Law unconstitutional. Palmieri dissented. In his dissent, Judge Palmieri wrote: "There appear to be people making a career of this type of destructive legislation." He was referring to those who would "let prejudice against education under religious auspices prevail over wise analysis," namely, those who attack every bill in sight which offers aid to non-public schools or parents of children in them.

Judge Hays has a record of anti-aid to private schools. We have been saddled with him in every school aid case.

I think it is time to review the makeup of our federal courts. Federal judges are appointed by the President for life. They have total security. They have no reason to be responsive to public debate. Because many of them have been appointed at a relatively younger age and remain on the bench for many, many years, they often reflect views which are not generally current in public affairs. For instance, the federal courts in the school aid bills are still reflecting the Know-Nothingism of the 19th century. Even the stable Catholic Church changes her laws, like the age old Friday Abstinence Law. For laws are made for people, not people for laws.

Second, federal judges have no mandatory retirement age. Thus a judge may continue on the bench beyond the period of his most effective service.

Third there is no systematic

means by which judges are assigned to cases or to three-judge courts. It seems the presiding justice of the circuit tends to assign judges on a "convenience to the judge basis" or upon a request basis. Thus if Judge Hays, who has a deep interest in expressing his point of view on First Amendment cases, were to request assignment to a case it is likely the circuit justice would respect his request. This may explain why we have been subjected to the opinions of Judge Hays in so many First Amendment cases involving educational aid.

It seems that we shall continue to be adversely affected by the federal litigation process as long as the current procedures remain. I think that it would be desirable that a major effort be made through appropriate sources to recommend to the Congress that there be some changes in the structure of the federal judiciary. These changes might include all or some of the following:

1. That there be limitations set upon the right of taxpayers to

sue and to begin a three-judge court case.

2. That organizations as plaintiffs should be barred unless they can specifically demonstrate a direct interest.

3. That the method of assignment of the judges to these courts be completely automatic and without any possibility of "forum shopping" or selection of particular judges.

4. That the term of federal judges be fixed for no longer than 6 to 10 years and that they have a mandatory retirement age of 65 or 70.

5. That there be established a special appellate panel of judges of the several circuits made up of probably five judges who would be an intermediate court of appeal from three-judge courts, so that there would be an assurance of one full review in every three-judge court litigation. At the present time the Supreme Court is swamped by cases and as a result many cases which should be reviewed by the court get pro forma dismissal by clerks employed by the judges.

## A Split Decision

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The two other judges, however, in leaving the door open on the tax-benefit issue, invited opposing attorneys to "move for a summary judgment or for an expeditious trial" on the question.

The decision was a partial victory for the Committee for Public Education and Religious Liberty (PEARL), a coalition of more than 30 civic, labor, educational and religious groups which challenged the law as soon as it was signed by Gov. Nelson Rockefeller last May.

In April, a suit initiated by PEARL led to a ruling by a three-judge federal court that a 1970 New York law providing \$28 million annually to cover state-mandated services in non-public schools was unconstitutional.

In his majority opinion, Judge Gurfein said of the tuition provision of the law that such payments are not comparable to state aid for transportation, books or free lunches. Those, he noted, are clearly grants to the families, whereas "there is no such distinction where the parent is a mere conduit for a payment of tuition" to a church school.

Concerning the tax-benefit proviso, he said: "There has always been a sharp distinction between grants of public funds to religious institutions, generally prohibited, and tax exemption for religious institutions, generally permitted."

"This indirect aid to religious institutions has largely taken two forms, exemption from local property taxes and the like, and exemption for contributions to religious institutions."

Leo Pfeffer, attorney for PEARL, said that his organization would immediately take that portion of the law to the U.S. Supreme Court on an appeal.

The New York Senate's majority leader, Sen. Earl Brydges, said in Albany that he would confer with the state attorney general on whether to appeal the rulings against tuition payments and maintenance.

On the other hand, the senator, a leading advocate of parochial school aid, said he was "delighted" by the court's decision which leaves open the issue of tax benefits.

The law's tuition portion struck down by all three judges would have allowed between \$5 million and \$25 million in reimbursement of tuition to parents whose state taxable income is under \$5,000. Parents would have received about \$50 for each grade school pupil and about \$100 for each high school student.

Under the tax-benefit proviso, which is still alive, middle-income families could deduct from \$100 to \$1,000 per pupil per year depending on income. A family earning \$8,000, or instance, could deduct \$1,000 for a benefit of about \$50 in taxes.

## Hebrew Executive Cites Court's 'Callous Disregard'

New York (RNS) — The national director of Torah Umesorah, the National Society for Hebrew Day Schools, has charged that the ruling of a federal court against a portion of a New York State law that provided maintenance funds for non-public schools showed "callous disregard for the health of children and the needs of the disadvantaged."

Referring to another provision that was declared unconstitutional by the court, Dr. Joseph Kaminetsky added that "the striking down of the provision for tuition grants indicates that the court mandates choice in education as a privilege for the rich and shuts the door on its availability for the disadvantaged, the poor and the middle class."

Dr. Kaminetsky, whose organization oversees some 180 Hebrew Day Schools in New York State with an enrollment of about 50,000 students, praised "pluralism in education" for enriching America.

Through its decision, he charged, "the court is determined to make such pluralism an

anachronism and to make education of the public by private schools a haven for the rich only."

### USCC Official: It's 'Encouraging'

Washington, D.C. (RNS) — Despite the rejection by a federal court of tuition and maintenance grants to non-public schools in New York state, a spokesman for the U.S. Catholic Conference here said the court's decision to leave open the question of tax credits is "extremely encouraging."

Commenting on the New York court action, Dr. Edward D'Alessio, director of the USCC's Division of Elementary and Secondary Education, observed that "it gives reinforcement to the contention of supporters of tax credits for parents of non-public school children that legislation of this kind does indeed meet constitutional requirements set by the U.S. Supreme Court."

Coupled with the action of the U.S. House of Representatives Ways and Means Committee in reporting out a federal tax credit bill, he added.

## Confirmation

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be obtained from the ordinary," the newsletter said.

However, if confirmation is not conferred on the occasion of adult baptism, the priest is not allowed to confirm the individual privately weeks or months later, the newsletter said.

The newsletter stresses that the rite should be placed in the context of an eucharistic celebration, and says the reason it was not done in the past was because confirmation itself was unduly long.

It points out that a provision has been made to shorten the rite. It allows "in case of true necessity and special reason" for the bishop to associate other priests with himself in the administration of the sacrament.

"Those asked to concelebrate with the bishop in the sacrament . . . impose hands on all the candidates in silence (by extending their hands over them, while the bishop says the prayer for the coming of the Holy Spirit; receive the vessels of oil from the bishop; and anoint the candidates, say the form and offer the sign of peace to each one that he confirms," the newsletter said.

A twofold imposition of hands also will be featured in rites this fall. The first occurs after the renewal of the baptismal vows and is a symbolic gesture "the faithful will be able to easily understand." It does not "pertain to the essence of the sacrament but is added rather to improve on the ritual action."

The second imposition of hands, the newsletter prefers the word "chrismation", is the actual anointing of the candidate.

Music also will be an important part of the rite and the newsletter stresses that it be well planned and "because of the solemnity of the occasion, it should be possible — with the help of a cantor and choir — to include more singing than at the usual Sunday eucharistic celebration."

Father Michael Conboy, secretary to Bishop Hogan, said that material for priests on both baptism and the new confirmation rites will soon be available from the Priests of the Sacred Heart, Hales Corners, Wis. 43130; and that information may be obtained by contacting the Washington office of the Bishop's Committee on the Liturgy.

Father Conboy also noted that the "Provisional Text" of the confirmation rites is available to priests from: The Bishops' Committee on the Liturgy, 1312 Massachusetts Ave. N. W., Washington, D. C. 20005.

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