

Law and Religion

High Court Facing Moral Issues

The Jan. 22 abortion ruling of the U.S. Supreme Court has clearly brought home the fact that the judiciary, while carrying out its role as interpreter of the Constitution; is becoming more and more embroiled in questions of a moral and religious nature.

Abortion is but one of many controversial cases facing the nation's court system, which have intense significance to religious leaders and to millions of Americans. The issues range from aid to parochial schools, capital punishment and prayer in public schools to controversies over Christmas creches in public buildings, religious services at the White House and compulsory chapel attendance at U.S. military academies.

The courts face the dilemma of deciding, on the basis of constitutional law, cases involving complex moral and religious questions.

In the instances of abortion and prayer in public schools, a substantial number of organizations and individuals are seeking alternatives to court rulings through amendments to the Constitution.

In many cases, higher courts and lower courts have rendered conflicting decisions on the same questions. This is particularly true when courts act on the basis of state constitutions. This, understandably, has caused confusion: "If busing parochial pupils is legal and constitutional in New York, why not in other states?" The confusion is compounded when it is also explained that the U.S. Supreme Court upheld such transportation in New Jersey almost 40 years ago; but that the decision did not make "new law" applicable to every state.

In most of the church related decisions it is rare for a unanimous ruling to be reached at any court level.

It is on the level of constitutional issues affecting the nation as a whole that the courts are making their greatest impact involving religion in America. Among the issues before the courts are income tax

credits for parents of children attending non-public schools, pornographic and obscene materials and ritual slaughter by Jews.

Within the past year, the judiciary, at varying levels, has acted to abolish capital punishment in most cases, indicated to 46 states that they must rewrite their abortion laws, struck down several forms of public aid to non-public schools but seemingly upheld tax credits pending a final Supreme Court decision, and ruled against private clubs' right to discriminate against minority groups.

Just a sampling of cases within the last year shows this continuing, if not burgeoning, involvement of the judiciary.

• In February, 1972, it was disclosed that 32 court cases, either challenging or seeking public funds for non-public schools were pending in state and federal courts. These, according to reports, were among 65 cases dealing with First Amendment provisions for freedom of religion and Church-state separation.

• In August, a three-judge federal court in Philadelphia rejected a suit challenging the constitutionality of the Vietnam war. Two months before, the National Council of Churches joined a friend of the court brief in support of the case.

• In September, a Minnesota county court denied a challenge to the state's tuition tax credit law, ruling that the law is constitutional because it provides tax relief to parents of children in non-public schools and not to the schools themselves.

• On Nov. 21, the U.S. Supreme Court refused to review a lower court ruling which upheld the firing of a Seventh-day Adventist who refused to join a union for reasons of conscience.

• Less than a month later, that same Court, in a 6-3 ruling, upheld the rights of states to regulate, in bars and nightclubs that dispense liquor, the sexual behavior of performers and patrons.

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• Also, in December, the court ruled that fraternal organizations may discriminate in choosing their members but cannot exclude anyone because of race, color or creed from being served food or drink. Meanwhile, a Maine court ruled that lodges which practice discrimination may not be granted liquor licenses.

• At about the same time, the U.S. Supreme Court refused to review a federal district court ruling which held that compulsory attendance at chapel in the U.S. military academies is unconstitutional.

• In January 1973, a federal district court in New York received a brief challenging the constitutionality of a federal law that gives special attention to ritual slaughter of livestock by Jews.

• Even more recently and in a more specific context, the U.S. Supreme Court overruled a lower federal court pronouncement that would have allowed two anti-war priests, Fathers Philip and Daniel

Berrigan, to visit Hanoi while on parole from a federal prison.

• As an example of conflicts in the area of tax exemptions, a U.S. Circuit Court of Appeals in Denver ruled last December that a publishing and broadcasting operation headed by Dr. Billy James Hargis of Tulsa, Okla., is ineligible for federal tax exemption because, the court said, it had attempted to exert "political" influence.

The major church-related issue still facing the nation's judiciary, particularly the U.S. Supreme Court, is the tax credit question. Already several states, including Minnesota and New York, have passed such measures, and bills are being readied in the Congress that would provide federal income tax deductions to parents of children in non-public schools.

With respect to abortion, components of two state legislatures — Virginia and Rhode Island — have already stood against the Supreme Court ruling by offering laws more restrictive than the guidelines set out by the court.

In 1971, the House of Representatives came close to passing a measure initiating a "prayer amendment," despite the fact the almost ten years had passed since the high court ruled against public school prayer.

The U.S. Supreme Court itself has carefully pointed out that government should show no hostility to religion or establish a "religion of secularism" any more than it should show preference to those who believe over non-believers.

Court decisions that are interpreted as affecting morals and religion have brought both positive and negative reactions from church leaders, scholars and others, no matter what the issue.

Despite the nation's history of religious pluralism and separation of church and state, moral and religious determinations filter into the nation's legal system and must ultimately be dealt with by the judiciary.

Hearing Set April 4 For R.I. Abortion Test

Providence, R.I. [RNS] — A U.S. District Court judge here has set April 4 for a hearing on a suit brought by the American Civil Liberties Union challenging the constitutionality of Rhode Island's newly passed abortion law.

Judge Raymond J. Pettine said he will then determine whether to hear the case himself or call for a three-judge federal panel. He said he will also hear arguments on a motion by the plaintiffs — three anonymous pregnant women seeking abortions — for a restraining order preventing the state from enforcing the abortion statute.

Rhode Island's current abortion law was passed by the legislature and signed by Gov. Philip Noel on March 13. In addition to restricting abortion to those occasions when the life of the mother is in danger, it stipulates that the unborn fetus is a "person," and that life begins at the moment of conception.

Judge Pettine granted a motion by ACLU attorney Richard Zacks allowing the three plaintiffs to remain anonymous, but he also told Assistant Atty. Gen. Slater Allen Jr., he would allow him to question the plaintiffs and take

depositions in the presence of their attorneys.

Allen is representing the defendant in the case, Rhode Island Atty. Gen. Richard J. Israel.

Judge Pettine also said that if he decides there is no need for a three-judge panel, the April 4 hearing would likely consider a motion for preliminary injunction. If such were granted, the judge observed, an appeal by the state could be taken and he would stay execution of the injunction for 24 hours while action by the U.S. Circuit Court of Appeals was sought.

Judge Pettine added that if he denies an injunction, the plaintiffs will have the same opportunity for appeal.

Judge Pettine explained that if he opts for a three-judge federal court to hear the case a temporary restraining order would have to be considered. This could remain in effect for many months, depending on when the full court acted, he said. "During that time Rhode Island would be without a law regulating those areas which the (U.S.) Supreme Court indicated could be the subject of legislation."

Stating his intention to conduct all preliminary hearings in public, the judge noted that there would be "no private conferences" with attorneys for either side.


"The magnitude of this case and the public reaction it has engendered calls for disclosure equal to that of the trial itself of all preliminary matters," he said.

CWU ASSEMBLY

The annual assembly of Church Women United in the Rochester area will be held at 10 a.m. Friday, April 6, at Greece Baptist Church, 1230 Long Pond Rd. Dr. M. Harjie Likins, visiting professor of education at Colgate-Rochester/Bexley/Crozer, will speak.

AUDIENCE WITH THIEU

Saigon [RNS] — Saigon Radio announced here that South Vietnam's President Nguyen Van Thieu plans to call on Pope Paul VI on April 8 or 9 following his visit to the United States.



THE SLOT MAN
Carmen Viglucci

Among the columns I should have written but didn't...

A conservative says you are not allowed to make up your own mind. A liberal says you should make up your mind then gets angry if you disagree with how he has made up his.

How much paper is wasted over the announcement, note-taking, reports and analyses of meetings which are forgotten three months later.

The ethnics who claim that blacks really don't belong seem to have forgotten that just one or two generations ago other Americans were saying the same thing about Italians, Irish, Poles, etc. When will it ever end?

I resent the fact that if you are opposed to abortion on demand some people consider you something of a religious fanatic.

How it is that when another guy aces you out in traffic he is an animal but when you ace him out you are merely exercising your right of way.

Is there any point to be derived from two recent

television shows, one about a murderer who used disguises, including one of a priest, to accomplish his crimes and the other about a policeman who used disguises, including one of a priest, to enforce the law.

The three Tom Ryans of Rochester. The WROC-TV Tom, whom I consider the most professional announcer in town (but then we were classmates at Albany High School); Tom, former police reporter with the Democrat and Chronicle and now making the Sheriff's Office look good in print; and Tom, the capable Rochester city councilman.

How come all those liberals who get irked over fun poked at women never said much about the fool made of so many fathers in television situation comedies? And how come we dear old dads never knew enough to speak up?

Why I'd like to arrange a meeting between those who have scorned the Courier-Journal as too liberal and those who have rejected it as too conservative.

Is it possible that just when a large segment of society is beginning to recognize the value of our elders, the Church is moving in the opposite direction?