

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

Our public schools today are undergoing what is probably the most intense and critical evaluation in their entire history. Their physical facilities, financial resources, and professional personnel are struggling to cope both with an ever increasing multitude of pupils who, willingly or otherwise, seek education, and with a host of old and new problems which now seem constantly to be reaching fresh crises under the conditions of modern life and civilization. The philosophy and the goals—the standards and methods—of our public schools are at present matters of controversy that is often more violent than constructive.

This symposium does not endeavor to discuss all aspects of these perplexing questions. For example, it touches but lightly, if at all, on the recruitment, competency, status, and tenure of teachers, including such sharply debated topics as academic freedom and loyalty oaths and investigations. It does not cover school finances, or go into the many problems involved in connection with the acquisition and maintenance of school property. Instead, it concentrates on the pupil and, in particular, on certain key aspects of the relationship in a democratic society between the students, their parents, and the public schools.

From the standpoint of the pupil and his family, perhaps the first questions to arise are when, where, and under what conditions he either must or may enter the public schools. In recent years, the rapid development of school buses, supplying free transportation to virtually all qualified pupils, has given new emphasis to familiar legal problems. For example, in many states, it is still uncertain as to the extent to which pupils and others injured by negligently operated school buses may obtain redress from school funds. This issue obviously requires reappraisal, in the light of the needs of our society, of the validity, if any, today of the time honored doctrine of sovereign immunity, which still to a large extent shields our public school systems from any liability to pupils and to others for wrongs committed by school employees while performing school functions. Similarly, school discipline often raises questions of the powers and liabilities of school authorities when they attempt to apply such measures to guide and control pupils. Finally, the contents of the school curriculum, what subjects shall be taught and by what methods, are currently matters of extensive debate in many communities. It is not surprising that the state legislatures have frequently attempted to prescribe standards or solu-

tions here, but, unfortunately, all too often such statutes are so poorly drafted as to raise far more problems than they settle for harassed school administrators.

Contemporary events have given new emphasis to some of these topics. The cold war arouses patriots to zealous efforts to insure the non-subversive nature of curriculums and teachers. Increasing juvenile delinquency re-emphasizes school discipline. There are, in addition, three matters which seem to pervade all these school problems. First, the relationship of the church and the state almost inevitably today focuses intensely on our schools. Both the church and state are acutely aware that the battle for men's minds and convictions may be won, at least for future generations, in the schools. Again and again, the demands of the state as expressed in its public schools sharply conflict with the religious beliefs of large and small groups. Separation of church and state does not necessarily insure the absence of conflict between the two. Second, the recent decisions of the United States Supreme Court proscribing racial segregation in public school systems will undoubtedly bring about profound changes in many areas. Indeed, in a few states, it is even possible that public schools, as we now know them, may soon cease to exist.

Finally, both these problems are perhaps but aspects of a still more basic one—the clash between the individual and the state—the conflict between the rights of an individual family group to educate its offspring as it wishes, and the requirements of the state, whether democratic or autocratic, that its future citizens must be so educated as to fulfill certain minimum requirements for the preservation of the nation as a whole. All of us surely recognize both the right and the duty of parents to train their children according to their individual needs and desires, but few of us today would deny the necessity for the state, especially in a democracy, to be certain that all its citizens have sufficient education to discharge the responsibilities imposed and take advantage of the opportunities offered by our society.

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