

Oct. 16, 2006

Letters to the editor

## **Voice of the Bar**

### **Thorough and Efficient Education for All: Move Forward, Not Backward**

Dear Editor:

The *Law Journal* published three consecutive editorials in September, totaling almost 3,000 words, on the state's constitutional obligation to provide all its children with a "thorough and efficient" education.

Unfortunately, by proposing that we move backward, not forward, the editorials contribute nothing useful to the debate about how to prepare our 1.2 million public school students for citizenship and to participate in the global economy. In fact, opinions such as those expressed in the editorials are more likely to undermine efforts now underway to reform our outmoded tax structure and school funding formula.

The first editorial, appropriately entitled "Back to Square One" [Sept. 11], argues for lowering the definition of a thorough and efficient education to the minimum level necessary to meet the demands of the labor market. The second, "Thorough and Efficient" [Sept. 18], is backward-looking in a more sinister way: It reads like a 19th century Social Darwinist polemic arguing that only the most gifted of poor children could possibly be capable of benefiting from more than a basic skills education. The third, "More Equal Than Others" [Sept. 25], contains a bizarre twist questioning whether our wealthier suburbs, home of what the editorial calls the indulgent "mandarin class," should serve as the model for high quality public schools.

Taken together, these editorials are a peculiar pastiche of bad legal analysis, discredited social commentary and, sadly, bigoted elitism. I am hard-pressed to

believe that they reflect the considered judgment of the distinguished members of this paper's editorial board. In response, I will explain briefly why these editorials do a great disservice to New Jersey's children, legal community and public at large.

The first editorial literally goes back 33 years to square one of New Jersey's school funding equalization litigation by reciting a long-established core constitutional principle: that education is a state responsibility. Explicitly set forth in our Supreme Court's very first opinion in *Robinson v. Cahill*, this principle means that local school districts exist to enable the state to discharge its responsibility, they must act in constitutional conformity and they must have adequate funding to provide a constitutional education.

The editorial then proposes the elements of a redesigned school funding system, as if it had newly discovered them: that the state define what a T&E education requires, identify how much it should cost, raise and allocate to school districts all the funds necessary for achievement of a T&E education, and assure that those state funds are well and appropriately used. Except for the recommendation of full state funding, we've been there and done that. The opinions in *Abbott v. Burke*, beginning in 1990, are replete with mandates for defining, costing out, funding and holding districts accountable for a T&E education. The landmark 1997 and 1998 rulings adopted, as the substantive definition of thorough and efficient education for all New Jersey students, the state's comprehensive academic standards in the full range of critical content areas – from math, to science, to the visual and performing arts. They further required the state to "cost out" or empirically determine the amount of funding needed to deliver a rich and rigorous curriculum based on the state standards. In other words, in developing a new funding formula, state lawmakers cannot simply do what they have done in the past: retreat to a back room and cook up a formula

based on what they are willing to spend or what they feel the budget will allow.

The editorial also seems to be unaware of our court's strong accountability directives in *Abbott*. These mandates firmly place upon the state Education Commissioner the nondelegable responsibility to ensure that all school funding is used "effectively and efficiently" by local districts to enable students to achieve state academic standards.

The editorial does recommend, contrary to *Abbott*, that, once the state has established a standard for T&E and fully funded it, "to the extent that local communities chose to provide more than the thorough-and-efficient standard, they would be allowed to do so through local taxation." This old approach — giving high-wealth communities a free hand to decide what education their children need and then tap local property wealth to pay for it — would quickly bring back the "spending gap" between low-wealth, high-poverty districts and those more affluent districts, a gap that *Robinson* ruled unconstitutional and *Abbott* largely eliminated. Moreover, the notion that taxable property belongs to local communities and can be used for the exclusive educational benefit of their children is clearly wrong as a matter of constitutional law. In its 1990 *Abbott* decision, the Court reminded us that:

All of the money that supports education is public money, local money no less than state money. *It is authorized and controlled in terms of source, amount, distribution, and use by the State.* The students of Newark and Trenton are no less citizens than their friends in Millburn and Princeton. They are entitled to be treated equally, to begin at the same starting line. Today the disadvantaged are doubly mistreated: first, by the accident of their environment and, second, by the disadvantage added by an inadequate education. The State has compounded the wrong and must right it.

119 N.J. at 375, 575 A.2d at 403.  
[Emphasis added.]

This idea — that local taxable property belongs to the local community and can be used for the exclusive benefit of its children — is a good bridge to the second editorial. Under the title "Thorough and Efficient," it asserts that the Court was simply misguided in 1990 when it construed the T&E education clause to mean that disadvantaged children in poor urban districts were entitled to the same educational opportunities as advantaged suburban children and that it would take more, not less, funding for them to have that. Rather, says the editorial, the definition of T&E should be guided by the notion that only "clever" children can benefit from and deserve the highest quality education. The editorial suggests, though it does not say explicitly, that all children of well-to-do parents are "clever" or entitled to be treated as such.

What of poorer children? If they somehow can demonstrate that they possess "superior abilities [that] can contribute to society's well-being," they, too, would be entitled to a high quality education. As to the rest, they would have to content themselves with an undefined "basic skills" education, designed to enable them to get jobs, to "function in the ordinary affairs of daily life," and as citizens. This runs directly counter to the *Abbott* Court's insistence on ensuring all children access to a rich and rigorous curriculum not just in math and language arts, but also in science, social studies, physical education, world languages and the arts. It also violates fundamental principles of equality, justice and fairness, and is shortsighted given the increasing demands of the global economy.

It's not clear what led the editorial writer to conclude, nonetheless, that this pinched and miserly interpretation of our "thorough and efficient" education clause is correct. The editorial begins (after quoting that distinguished education expert, Yogi Berra) by referring to *Webster's* definition of "efficient," but it

ignores the definition of "thorough." Instructively, *Webster's* provides four definitions of "thorough:" "carried through to completion;" "marked by full detail;" "complete in all respects;" and "having full mastery." That sounds decidedly as if the plain meaning of a "thorough" education is the best possible education, rather like what wealthy, advantaged suburban districts say they provide their students. Perhaps the Court and Chief Justice Robert Wilentz weren't off the constitutional mark at all.

The second editorial holds up no better as social commentary than it does as constitutional analysis. Does anyone other than the author of that editorial still think about our state as a place where "intelligence and energy are found in the cottage and the hovel as well as the manor"? (No kidding — I didn't make that up or derive it from some Victorian source; it is a verbatim quote from the Sept. 18 editorial.) Does anyone other than its author still believe that only children in the "natural aristocracy of talent and virtue," or the children of those who have "risen in the world," are entitled to a high-quality education?

The third editorial embellishes, but not always consistently, the theme that New Jersey has two fundamentally different classes of children whose educational opportunities, of necessity, are and should be different. There are children of the "mandarin class," of parents who "have risen" in the world, and there are the euphemistically described "children raised in different circumstances." The first class is entitled to whatever formal and informal education their mandarin parents are willing to buy for them, even if it is indulgent and wasteful, or "more ornamental than essential." But the second class of children is entitled to much less, even for those of its membership "able to rise." For them, the "proper standard of a thorough and efficient education ... is found by working backward from what the gatekeepers of the next level will demand from them, not by looking sideways at what other indulgent parents may be doing." In other words, poor

children of "superior" ability should have their educational standards determined by employers, or perhaps by colleges and universities, but surely not by what their parents want for them, or by what more affluent parents want for their children.

How can poor, disadvantaged children be relegated to second-class status and inferior treatment? According to the *Journal's* editorialist, it is an inevitable outgrowth of the desire of those who have successfully chosen "to pursue education, wealth and position...to give *our children a better than equal start in life.*" [Emphasis added.]

That statement most clearly highlights the core difference between the editorials and the Court's *Abbott* decisions: The editorials argue for a public school system that provides high-quality education mainly to the most affluent, while the court insists on a public school system that, to the maximum extent possible, strives to equalize opportunities and life prospects of poor children with their advantaged peers. The choice is clear; indeed, to me, it's not really much of a choice at all, constitutionally, morally or pragmatically.

New Jersey already has some of the nation's best public schools in our suburbs and, because of the improvements in urban education under *Abbott*, we've begun to close the achievement gap. But not all disadvantaged children in our state are benefiting from high-quality preschool, adequate facilities, early literacy and other educational improvements in our urban schools. It is time, then, to strengthen, not weaken, our public schools for all children, regardless of class, race or zip code. This effort must be informed by our core values of equity and justice and by the global economic realities that confront our state and nation. We must reject the call of the *Law Journal* editorials to turn the clock back to the not so distant and shameful past of education inequality.

As we move forward, not backward, our efforts should be focused on fully realizing the hope that *Abbott* has inspired and the progress it has set in motion. That

will be challenge enough given the fiscal corner into which we've backed ourselves over the past two decades by a series of short-sighted, disingenuous and irresponsible actions. Extricating ourselves from that corner will be difficult and painful. The ones most deserving of being spared the pain are the poor, disadvantaged children whose disadvantage, until *Abbott*, resulted in large part from the inadequate and under-funded education their state chose to provide them.

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