

## Analysis of Filer Commission Report

Bishop Raymond J. Gallagher

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# DIOCESAN ATTORNEYS' PAPERS

## ANALYSIS OF FILER COMMISSION REPORT

**Bishop Raymond J. Gallagher, D.D.  
Diocese of Lafayette in Indiana**

Thank you, Gene, for your very cordial invitation to speak to the meeting of Diocesan Attorneys, Father Sheehan, my brother priests, ladies and gentlemen. I would have been tempted to introduce my comments with a humorous story but I fear I do not have the writers of the caliber possessed by Father Sheehan. I have only four writers, and these are Matthew, Mark, Luke and John. However, I do want you to know how much I enjoy the opportunity of visiting with you today to share the experiences which I had as a member of the Filer Commission. When Gene asked me originally, I was thrilled to accept the invitation. Perhaps if I had thought carefully about the importance of the group I would be addressing, I might have been more fearful. But here I am ready to plead innocent to anything I am going to say, probably pleading innocent by reason of insanity.

I would like to share the sentiments of gratitude and appreciation which Father Sheehan expressed to you gentlemen. On the part of all of us who are responsible for the position which the Church takes in many different situations, we are greatly indebted to you and your counterparts throughout the country for the assistance you give us in the very technical aspects of our legal operations. We certainly have become a more complex operation as a Church in these modern times and our involvement in legal affairs seems to increase day by day. This is happening in spite of the fact that we pride ourselves on being separate and apart from the ordinary worldly dealing since we are a Church determined to address itself to spiritual and pastoral concerns of 48 million people in this country. Out of necessity and administering such a complex organization we do come in contact with a variety of institutions and agencies of the law and truly, therefore, we are not separate, certainly not separate from the general legal system of our country. Time and again we are appearing in courts or in litigations or one kind of another in order to preserve the rights and the identity of our Church as an organization, not that we might profiteer by this separate identity but rather that we be freer to advance its cause.

You are aware as all of us are of the frequency with which other groups are

using the courts to attempt to minimize the freedom of religion in one or the other aspect of our program. You are acquainted as I am with individuals, sometimes from the legal profession, who would attempt to interpret in a very extreme way the notion that the rights of other people are being limited or contravened by the rights of institutions. It would seem to fail in the consideration which all intelligent and sensible people would give that the common good must be preserved and that the rights of appropriate institutions and individuals must be intertwined in the achievement of that common good. Surely the Church then qualifies in that general category for a rightful place in the affairs of mankind and should not be constantly under attack by the use of legal devices to limit its freedom to operate.

Our freedom to grow and to develop as a people of God seems to be fenced in occasionally by the intrusion of law suits or test cases carried to the highest courts of our land by those who are not as equally persuaded as we are as to the importance of religious considerations, religious values in the total context of society. They have little feeling for the basic loyalty to God, the love of neighbor which would motivate organizations like our own and members thereof to serve the needs of our brothers without any ulterior motive nor any profit-making desire. Because of its operations, the Church has often been misinterpreted, misunderstood and even suspect simply because we have not been able to be as open on integral and executive matters that occupy us and our agenda day by day. The right of privacy of our organization is a right much to be prized and not to be yielded simply because of the threat of these protesters.

Through your work the open stance which we take in these days, the pursuit of the art of communication to present the inner workings of the Church to the world is much enhanced and we feel that we will overcome in time the misunderstandings and the suspicions so that we may be accepted as equal partners in the procuring of the rights of all and in achieving the common good. In the meantime, while we wait for this day to develop, we rely heavily upon the legal profession, particularly you, the Diocesan Attorneys, to defend the rights which are inherent in our very existence and to defend the Church which is attempting to advance the cause of Christ.

One such problem of advancing the cause of Church related organizations is the explanation of my presence on your agenda today. That would be the problem of continuing in the minds of our legislators, state officials, internal revenue personnel, a continuation of the broad national understanding of the unique place which religion plays in the affairs of our country, both past, present and future. It would seem continuously necessary to delineate the place which religion has held in the thinking of our founding fathers and to portray the respected and earned place which religious institutions and their services have gained through rendering a great contribution to the general welfare. The fact that this must be preserved by the law of the land makes it most important that we utilize every opportunity available to us to use your expertise and to be guided by it in our relationships with the law and with the government.

Most of us are guided by the trends and the decisions that are rendered by the highest tribunal and, therefore, form our opinions of the institutions before the bar by reason of these opinions. This at least is the approach of the rank and file, the informed and the uninformed in our society. For this reason the Church in recent decades has suffered quite a few set backs by their raising of the ugly head of

bigotry or crass ignorance with regard to the affairs and the positions of the Church. We have suffered in terms of the respect which we deserve for the superior motivation for the very existence of our programs and it is important for us to maintain a clear and accurate understanding of our role so that we may be able to fulfill the destiny of the program of the Church with which we are identified.

I refer, of course, to the experience that I enjoyed as a member of the Filer Commission for a period of about 18 months beginning in the spring of 1974 and lasting through October of 1975. This Commission, as you are undoubtedly aware, was first suggested by John D. Rockefeller, III. With the authorization of the then Chairman of the House Ways and Means Committee, Mr. Mills, and the former Secretary of the Treasury, Mr. Schultz, a Commission was appointed which had as its goal the study of voluntarism and private philanthropy as it is an ingredient in meeting public need. From a very high and noble motivation the Filer Commission began its work. It was very well organized, headed by well informed people who grasped the nature of the problem confronting America in its endeavor to preserve one of its most priceless heritages, that is, voluntarism as expressed in the rights of individuals to deal with problems at their own level, using their own money and attempting to render the service on a private basis. Great efforts were to be made by the Filer Commission to preserve the notion of the rightful existence of these voluntary efforts and their legal right to be considered in an entirely different capacity and character than normal governmental operations.

About 35 people were called together to comprise the membership of this Commission and were headed by John Filer of Hartford, Connecticut, who is the Chairman of the Board of Aetna Life and Casualty.

During the remainder of my remarks to you it will be my intention to outline some of the problems we faced and to identify these not as simple agenda matters that occurred within the life of the Filer Commission, but rather to identify them as undercurrents or atmospheres which prevailed in the Commission which I believe to be typical of the conditions under which voluntarism, especially as administered by the Church, operates today. I think also that I will be presenting to you some of the probable problems which we as a Church will face in the years that are ahead by reason of the thrusts and the apparent challenges which are rampant relative to the rights for tax exemption.

To be perfectly fair and honest with the Filer Commission and its enterprise, I must take a moment to illustrate some of the very fine recommendations which emerged from the Commission Report. For the most part I would say that the Commission was attempting to be faithful to the charge of preserving the place of private philanthropy in our social and governmental complex in this country. Secondly they surrounded themselves with very fine and expert help. Mr. Leonard Silverstein who is an expert in the tax law, directed the staff of the Filer Commission. A Mr. Gabriel Rudney, who is a career employee of the Treasury Department, also served on the staff as a director of research. Consultants to the group were two men from the academic field, namely, Professor Adam Yarmolinsky from the University of Massachusetts and Paul Ylvasaker, Dean of Graduate Studies at Harvard. The process by which the material was developed for consideration by the Filer Commission was very sophisticated and very competent. They contracted for research, the like of which had probably never been done before. They brought together people from many fields of taxation, of government policy and of the

private philanthropic field to contribute their best thinking to background papers which were made available to the members of the Commission. Men like Joseph Peckman of Brookings Institution in Washington, Martin Feldstein of Harvard University, were engaged to develop specific research testing out the theories of tax implications for exemptions granted to nonprofit organizations. This kind of serious research then was regularly shared with the members of the Committee, being provided to them several weeks ahead of the monthly meetings which we convened.

We met on the average of about three days each month during the year and a half of Commission activity. We had a chance to study the findings that were being made by the researchers and had the opportunity of questioning them as they presented their material to the Commission. These men came to our meetings and added by their personal interpretation to the written word which appeared in their reports. It was the hope of the members of the Filer Commission that the research thus being produced would indeed substantiate the general claim that voluntarism was good for America and that it should not become crowded out of its operations by undue governmental restrictions or regulations. We had the opportunity of speaking very plainly and openly so as to debate and discuss the proposals that were being made without, in the early stages of the game, taking any final position.

We engaged in a long process of reviewing much material before any effort was made to put down in writing an initial set of agreements reached by members of the Commission. From the very beginning of my participation, I continued to make inquiries about the possibility of any hidden agenda in the planning for the Filer Commission. Due to the fact that it came into being largely through the instrumentality of the Rockefeller Foundation and was generously supported by Carnegie and Ford Foundations, the suspicion of primary interest in the fate of private foundations set itself forward as one possible caveat. As the deliberations went on, it seemed to me to be more and more an effort to protect the status of foundations and to reduce the impact of tax law on their operations. Frequently in the argumentation of these issues the desire to protect all of philanthropy was largely a shield being cast over foundations to protect them, principally. Making this statement to the Chairman of the Filer Commission during one of my interventions, I must admit that I did not receive a very pleasant reaction. Perhaps his very reaction to me was more of an indication of what existed than he intended it to be. I felt that as a religious group represented on the Commission I had to repeatedly call to their attention that the religious groups in this country, for which I seemed to be the only spokesman, constituted a much larger proportion of the voluntary field than they were being given credit for in the thinking and in the deliberations of the Commission. They seemed to be unmindful of the immediate effect on religious organizations of some of the proposals which they were making for new tax laws. There were many times when they would seem to be oblivious of the problems created for religion by such recommendations as tax credits. They seemed to forget that in very recent days the Supreme Court, in the matter of Catholic education, had ruled that tax credit for taxpayers sending their children to parochial schools, was not acceptable and had been ruled unconstitutional. In spite of the brilliance of some of the people who were there and the consultants who were certainly expert in their field, this fact seemed to attract little or no attention among them. I felt that it was a constant battle to keep reminding them that when they made any recommendation in behalf of the philanthropic field that they had to consider the

unique position of religion in the United States and the present attitude of the Supreme Court toward the place of religion in the public affairs of our country. Consequently, they had to be very precise in their thinking and not put together in one container the interests of such disparate philanthropic organizations. It is encouraging, however, to see that in the final report they did eventually recognize the unique contribution made by religious groups of all denominations whose services and contributions in the field of health, education and welfare made them truly worthy of the tax exemption which they were being granted. In addition, we had the opportunity of making the point that spiritual and pastoral responsibilities in our parishes would be in danger of very serious retrenchment and almost elimination if the tax exempt character of these organizations was in any sense placed in doubt.

I should also comment to the extent that I felt there was a general tenor of remarks from the Commission members which seemed to place a question directly to us, namely, "is religion that important as a separate consideration in this country, that it should receive this special consideration in all of the laws and customs of the United States?" I would have to admit that there was some recognition from the Commission members that, like other nonsectarian dimensions of voluntarism, people from religious organizations also gave hours of service and, therefore, deserved the respect and appreciation for the service rendered to the country. There did seem, however, to be the overtone that they thought we should look very closely at the present principle of exemption and deductibility where religious institutions were concerned. This seemed particularly to be the underlying philosophy of Professor Yarmolinsky. Professor Ylvasaker from Harvard did not take this very opposing position. It also seemed to be the flavor of the remarks of career employees of the Treasury Department if we are to take at face value the comment of Mr. Gabriel Rudney or of Mr. Sherry who is currently on the faculty of Harvard but was formerly a career man in the Treasury Department. Mr. Sherry particularly introduced the notion in our discussions that all income belongs to the government and they simply allow us to hold out that amount which is necessary for our sustenance, perhaps only on a survival level. The rest, in his estimation, belongs to the government and we should not consider it an invasion of our personal property to be asked to return everything except our basic needs to the government. This notion came out repeatedly and had to be dealt with. Thank God, there were others among the Commissioners who felt that this was a gross invasion of the privacy of individuals and that each person had the right to the return of their own sweat, earning a living for themselves and for their families and that the rights of government came only after the needs of their families had been met. I mention this only as one of the trial balloons sent up occasionally during the life of our Commission. I think, however, it is a balloon that we will be seeing again and again as these movements to reduce the place of religion in American life continue to gain power and momentum.

We were also impressed by the theories offered which expressed the opinion that voluntarism was losing ground and was no longer viable as a means of keeping up with that part of the demand of the American public. It seemed to me that they took the experience of voluntarism completely out of context and placed it in a new set of facts and figures; they reflected very accurately the impact of inflation on the affairs of all kinds of businesses and industries. They did not, however, have

the consistency of applying these same influences to voluntarism and concluded that because they were falling behind in their capability of meeting the need by reason of inflation, that this was grounds for which they should consider abolishing the voluntary field. I was deeply impressed by the illogical use of concepts and the loose quoting of statistics in order to support their viewpoint. For example, on one occasion an earlier form of the Commission report proposed to blame the increase in Medicare expenditures on the inability of private religiously sponsored organizations to meet health care needs. They did not bother to consider that Medicare was a federal program enacted by the Congress and financed by an allocation from federal funds and that the excessive use of its benefits or perhaps the unlawful exploiting of its possibilities by some people in the health care field had created the problem. To tie this failure into the voluntary field, particularly to the religiously sponsored health care organizations, seemed to me to be so illogical that it didn't deserve an answer. I felt I had to give an answer, though, and called this bit of faulty logic to the attention of the members of the Commission. I think I was able to make the point that Medicare and Medicaid were programs enacted by proper legislatures and that the success or failure of these programs had no relationship to the capability of voluntary health care centers to provide the kind of service that they stated they could provide.

This kind of illogical thinking was very frequently introduced in the early stages of the Commission's existence and frequently had to be pointed out as being irrelevant and nonapplicable and not worthy of a Commission of the importance and dignity of the Committee on Private Philanthropy and Public Needs. I believe that we have come to the point where we recognize that we are faced with a situation that is challenging us as the leaders of a Church, both we who administer the Diocese and its institutions and you who are our professional representatives in the courts. It seems to me to say that we must have a constantly working "early warning system" as to what is transpiring in the various power centers in the United States as these developments are a threat to the continued free existence of religion in American society. It seems also that we must have the quick capability of responding to these half truths which are being offered as the basis for removing from our national tradition one of the richest experiences that has been part of the history of the United States, namely, the place of the voluntary effort and the role which religious organizations play in that very admirable tradition. It would seem that secularism and humanism and anti-religious sentiments are rising and are becoming more daring day by day and that our work is cut out for us if we are going to preserve the traditions which are truly American and which have contributed to our greatness, thus far.

I would like to share with you now for just a moment some of the precise problems which were created for us by reason of proposals which were within the context of preliminary Commission reports. Thank God, not all of them were included in the final form but a stout defense was made for them during the formative stages. One of the most fundamental threats is one to which I have already alluded, namely, that deductions for voluntary charitable, religious, and educational programs should be removed from our tax laws. They propose a substitution of a tax credit for taxpayers who contribute money to these enterprises. As I mentioned earlier in my remarks, I had to remind the members of the Commission again and again that this very device which was proposed by Catholics as a means of aiding

education was declared unconstitutional. I had to convince them that if it was unconstitutional in the matter of supporting sectarian education efforts that it would also be unconstitutional in supporting health and welfare services under the auspices of the Church.

Another veiled effort to do away with deductibility of gifts to religious efforts in health, education and welfare was the suggestion that we do away with all exemptions for tax deductible gifts and simply increase, perhaps double, the standard deduction. This, of course, was their answer to the plea that was coming from some limited sources that there be a certain equality in the deductions enjoyed by rank and file taxpayers. It seemed to me that this was to be a small bone thrown to the unhappy taxpayers in order to quiet them for the moment in their protests about the vast exemptions which were being given to high income personnel.

Another problem which was constantly before us was the movement to have religious organizations who were engaged in health, welfare and educational activities financed by tax deductible dollars to open all of their books to an annual audit by government auditors, thus making a great deal of work for the independent voluntary religious organizations simply to prove that they were eligible to receive the tax deductible gift. It almost seems like a presumption that there is dishonesty in the operation of all of these organizations and that they must prove their honesty and their right to deductible gifts on an annual basis. They also failed to see initially how this would diminish the number of dollars that would be actually available for the beneficiaries of these programs since the private organizations would have to pay for these audits according to a fee fixed by the government.

Still another of the areas that were under attack was an effort to reduce the tax advantage of giving gifts of appreciated value. Education and health care services are particularly the beneficiaries of these appreciated gift methods and there would seem to be an extraordinary threat against the continuation of this sort of gift. They continued to emphasize what seemed to be an extraordinary advantage given to those who would hold stock that appreciated in value and then contribute the stock at the appreciated value, thus taking advantage of the differential as a donation.

The right of access to the operation of private organization in the field of philanthropy was another thrust that raised its head in the discussions of the Filer Commission. It would seem to me that there was unusual emphasis being brought to bear on the Commission by representatives of various peoples' lobbies, raising their strident voices demanding that there can be no private operations of any sort and that everything had to be open to anyone who wanted to investigate or examine their books; that their Board of Directors be open to membership on the part of the peoples' representatives whether they had a right to be there or not. Previously, in our contact as a Church with the government these very precious rights and values such as the preservation of our own integrity and the right to privacy of our own operations have been gained by men like yourselves and by the General Counsel of the United States Catholic Conference. It was, therefore, a very hard-fought victory which gave us this recognition and it was a goal not to be easily surrendered simply because of the volume of the voice being raised by these populist groups. In very much the same spirit these groups were demanding that on our Board of Directors or Advisory Committees in the Church organizations, there should be representation from public citizen groups even though their existence and their

needs and their identity were not necessarily germane to the purposes of the organization or to the agenda of the meetings they wished to attend. All of this seems to me to be a reflection of the kind of turbulence that is being created in our society by these quasi-revolutionary groups. We are all aware of the disturbing influence that they have had in governmental and in political circles. In things that are truly part of the democratic process I am sure that the people have a right to be heard and that appropriate representation is always in order. When the operation of a private organization is concerned, where its reason for being, its goals, its program and its philosophy are not immediately familiar to the rank and file citizen, these organizations have a right to operate with the kind of representative board and committees that comprise a group of people who are knowledgeable and who have a stake in the successful continuation of the program. I regret that the Filer Commission still shows an extraordinary sensitivity to the demands of these self-appointed citizen lobbies.

Finally, one of the things that was the cause of greatest upset among many of us was a proposal initiated by Professor Adam Yarmolinsky. He proposed that because of the seeming problems and unevenness in the private philanthropic field that there should be appointed a National Commission, by Act of Congress, authorized to supervise the activities of the private voluntary sector. His initial recommendation was that this Commission would be top-heavy with elected and appointed governmental officials and that there would be a segment of representation from the private field. We all know what happens when government is involved in any way in government private-citizen relationships. The power of government, the fact that it has more resources, the fact that it can outsit the representatives of any other interests seems to me to guarantee that the viewpoint of the government is always going to prevail. In my protest to the Commission about the establishment of this National Commission, I suggested that the private voluntary field would very quickly become a pseudo-governmental operation. We from the Catholic community opposed the establishment of the National Commission in the final form of the Filer Commission Report and were able to solicit considerable assistance from the Jewish community as represented on that Commission. We did not prevail, however, and in the final report of the Commission there is a recommendation that such a National Commission on the voluntary field be appointed. We had to be satisfied with filing a Minority Opinion which is included in the text of the report. As good as that process is, I am sure that it will remain a Minority Report and will not be very effective in maintaining a successful opposition to the entrance of government officials and auditors into the affairs of our voluntary philanthropic organizations or their related auxiliaries.

While we were unsuccessful in directing the final form of the Filer Commission Report in all areas, at least we were able to hold the line in the matter of tax exemption for voluntary organization programs, particularly those under the auspices of the Church. We were also able to defend the practice of deductibility for gifts made to these tax exempt programs. One thing which the Commission did to try to carry out its commitment to improve the potential income for private philanthropy was to make recommendations about increased deductibility. For example, for people who had an income of \$15,000 or less, it was recommended that a double deduction be given for the itemized gifts which they made to charity, education, health and welfare. For people making between \$15,000 and \$30,000 annually, it

was recommended that not a double exemption but an exemption of 150% of the present level be extended to them. Secondly, they did move to preserve the appreciated gift as it is now currently in the law. They also entered into the final report that all other organizations except religious groups should be subject to an audit and they would have to pay out of the income a pro-rated fee for this audit. At least the Church organizations have continued to enjoy an exemption from this recommendation.

I apologize for the sketchiness of the precise remarks about the Filer Report, which I have given above, but I have already gone over my allotted time and I do not wish to interfere with the schedule of important matters which are yet before you. In closing, however, I simply wanted to express the concern that I feel as I come away from those meetings. That concern is that our work is really cut out for us if we are to preserve the institution of voluntarism in the United States in the decades that are ahead. Truly it is under attack and under attack for what I believe to be false and specious reasons. We are obligated to remember how the franchise of citizenship is vital to the health of this democracy and without the active, inspired role of individual people rising to do the extra thing in behalf of their neighbor and doing so on motivations that are founded in our faith, doing so with a sense of dignity and freedom, both for the benefactor and the beneficiary and unless we see this as an American institution we are interested in preserving, we may find a situation developing that will render us impotent as we attempt to defend many of the other rights of individual citizens in our society. Let us recognize that these values are symbolic of an ideal form of self-government and that if we wish to preserve all of the values of self-government we must provide for the protection of this particular instance.

Let us recognize that we as representatives of a specific faith have the additional obligation of preserving it and acting it out so that they may believe that we are not like some of the profit-makers, some of the sinners in the field of philanthropy who seek only to pad their own pockets. It is our responsibility to make them believe that by and large, with just a few exceptions, that we are given to a life that is meant to alleviate the conditions of the poor and the needy, to illumine the minds of the poor and the ignorant, to give a home to those who are homeless and to give solace to those who are sad and alone. If it comes to the day that we must all dance to the tune of the government fiddler, then our lives are no longer free and the Christian expression of our faith is no longer possible as it should be.

I thank you all very kindly for the attention which you have given to me. I would like to express my gratitude to Gene Krasicky and George Reed of the Office of General Counsel, to Father Whelan and Tom Hinton, Father Bob Monticello of the U.S. Catholic Conference for the admirable assistance and the seconding of my every effort by their competence and by their skill. It was a good team and I was glad to be a member of it.