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Constitutional Law--Released Time Program in New York (Zorach et al. v. Clauson et al., 99 N.Y.S.2d 339 (Sup. Ct. 1950))

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answered in the affirmative the confession is said to be involuntary.[16] While it may be true that the facts in the *Watts* case are not unique, the language of the Court indicates that it will demand a stricter enforcement of the individual's rights. The Court, in short, states that regardless of whether the confession can be said to be trustworthy or to have been given with mental freedom, if it is the product of improper police procedure it cannot be regarded as lawful.[17] The Court points out that it is the historic function of the due process clause to assure the individual of proper procedure before his liberty is curtailed,[18] and regards the decision of the Indiana Court as violating that function.[19] The dissenting argument in the Supreme Court decision that injustice might occur in particular cases and that police officials would be unduly burdened is best answered by the majority's statement: "But the history of the criminal law proves overwhelmingly that brutal methods of law enforcement are essentially self-defeating, whatever may be their effect in a particular case." [20]

Although the Court realizes that unwarranted restrictions on police officials would retard the administration of the criminal law, it will not tolerate those actions which infringe upon the individual's constitutional rights.

CONSTITUTIONAL LAW — RELEASED TIME PROGRAM IN NEW YORK. — Petitioner, a citizen and taxpayer, and parent of children attending public school, sought to review the determination of the Board of Education in establishing the "released time" program of religious instruction with the ultimate aim of compelling the discontinuance of such program. Petitioner contended that such program was violative of the First Amendment to the Constitution of the United States. *Held,* petition dismissed as a matter of law. The First Amendment was not violated by the "released time" program as conducted in New York City. To restrain authorized educational agencies from granting released time for these purposes would be a suppression of the right to freedom of religion which is guaranteed

[16] "In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort." Wilson v. United States, 162 U. S. 613, 623 (1896).

[17] Watts v. Indiana, 338 U. S. 49 (1949).

[18] *Ibid.; accord,* U. S. *ex rel.* Montgomery v. Rager, 86 F. Supp. 382, 388 (N. D. Ill. 1949). The court in this case stresses that due process means the due course of proceedings in the administration of justice.

[19] See note 1 *supra.* The Indiana court stated in substance that if the confession was not given through fear or inducement, then the previous police procedure is unimportant.

[20] Watts v. Indiana, 338 U. S. 49, 55 (1949).

by the First Amendment. *Zorach* et al. *v. Clauson* et al., 99 N. Y. S. 2d 339 (Sup. Ct. 1950).

The precise effect of the "establishment of religion" clause [1] and the doctrine of separation of Church and State on governmental relationships with sectarian institutions has long been a perplexing problem. Judges and courts have disagreed on its interpretation since the beginning of the country's judicial history. State courts have differed widely in their opinions on the reading of the Bible in public schools,[2] teachers wearing religious garb,[3] payments from public funds to religious homes and institutions,[4] transportation in public vehicles to parochial schools,[5] and the incorporation of parochial schools into public school systems.[6] The foregoing opinions have therefore not been clear and convincing. The United States Supreme Court has declared that the principle of separation of Church and State means that the government, federal or state, can pass no law favoring any one religion or all religions.[7] The Federal Government thus cannot participate openly or secretly in the affairs of religious groups. Thus, religious freedom is secured from the invasion of civil authority, and vice versa, for ". . . power is no more to be used so as to handicap religions than it is to favor them." [8] In short, Jefferson's "wall of separation" is to be kept high and unsurmountable. In *Everson v. Board of Education,* however, the court decided that use of public funds to reimburse parents for carfare of children attending parochial schools (as well as those in public schools) was not a violation of this principle since it was a valid exercise of the police power and was serving a public purpose.[9]

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[1] U. S. CONST. AMEND. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ."

[2] Ring v. Board of Education, 245 Ill. 334, 92 N. E. 251 (1910) (objectionable); Weiss v. District Board, 76 Wis. 177, 44 N. W. 967 (1890) (objectionable); Kaplan v. Independent School District, 171 Minn. 142, 214 N. W. 18 (1927) (not objectionable).

[3] Gerhardt v. Heid, 66 N. D. 444, 267 N. W. 127 (1936) (not objectionable); Hysong v. School District, 164 Pa. 629, 30 Atl. 482 (1894) (not objectionable); O'Connor v. Hendrick, 184 N. Y. 421, 77 N. E. 612 (1906) (objectionable).

[4] Bradfield v. Roberts, 175 U. S. 291 (1899) (not objectionable); Trost v. Ketteler Training School, 282 Ill. 504, 118 N. E. 743 (1918) (not objectionable); Dunn v. Chicago Industrial School, 280 Ill. 613, 117 N. E. 735 (1917) (not objectionable); Cook County v. Chicago Industrial School for Girls, 125 Ill. 540, 18 N. E. 183 (1888) (objectionable); Collins v. Kephart, 271 Pa. 428, 117 Atl. 440 (1921) (objectionable).

[5] Bowker v. Baker, 73 Cal. App. 2d 653, 167 P. 2d 256 (1940) (not objectionable); Judd v. Board of Education, 278 N. Y. 200, 15 N. E. 2d 576 (1938) (objectionable).

[6] State v. Boyd, 217 Ind. 348, 28 N. E. 2d 256 (1940) (valid since Board of Education supervised and no religion taught during school hours); Knowlton v. Baumhover, 182 Iowa 691, 166 N. W. 202 (1918) (invalid though the public school had been closed).

[7] Everson v. Board of Education, 330 U. S. 1 (1947).

[8] *Id.* at 18.

[9] See note 7 *supra.*

The constitutionality of various "released time" programs in which the public school time is curtailed in order to provide time for religious instruction has likewise been treated differently in the various courts. It has been held that it was unlawful and unauthorized to substitute religious instruction for required public school curriculum, and that permitting pupils to leave early to attend religious classes was tantamount to such.[10] Printing of cards for such program on school presses was an unauthorized use of public funds in aid of religious institutions.[11] Similar programs differing only in that no cards were printed on public property have been sustained as constitutional on the following bases: that separation of Church and State was complete,[12] that requirements of regular attendance are elastic and absences are excusable for any legitimate reason within the discretion of authorities,[13] and that the slight use by teachers of state time (in dismissing pupils early) is not objectionable as a use of public funds for private purposes since as a practical matter the amounts are negligible.[14] In the leading case of *Illinois* ex rel. *McCollum v. Board of Education*,[15] the Supreme Court held that a released time program was unconstitutional in that it showed use of tax supported property and public funds in aid of religious instruction. One of the purposes of separation of Church and State is to keep the public schools free from private pressures so as best to educate the pupils, and this particular program showed a tendency to arouse divisive conflicts and to sharpen the consciousness of religious differences among children.[16] Released time programs, however, are not per se unconstitutional.[17] The decision in each case will depend upon the particular facts and operating modes of each such program,[18] the pivotal questions of use of public property and funds, the participation by public school authorities,[19] and the effect

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[10] Stien v. Brown, 125 Misc. 692, 211 N. Y. Supp. 822 (Sup. Ct. 1925).

[11] *Ibid.*

[12] Gordon v. Board of Education, 78 Cal. App. 2d 464, 178 P. 2d 488 (1947) (statute and program similar to that of New York).

[13] People v. Graves, 245 N. Y. 195, 156 N. E. 663 (1927) (constitution does not discriminate against religion; it merely keeps it in proper place; Board of Education supervises to prevent abuse).

[14] People v. Board of Education, 394 Ill. 228, 68 N. E. 2d 305 (1946) (*de minimis*).

[15] 333 U. S. 203 (1948).

[16] *Ibid.* It is interesting to note, however, the observation of Justice Jackson in his concurring opinion that there will always be dissatisfied minorities, and that embarrassment always attends nonconformity.

[17] "We do not now consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial. Different forms . . . like that before us, could not withstand the test of the Constitution; others may be found unexceptionable." *Id.* at 231.

[18] "We do not now attempt to weigh . . . every separate detail or various combination of factors which may establish a valid 'released time' program." *Id.* at 231.

[19] "It is only when challenge is made to the share that the public schools

upon the children and the community.[20] Subsequent to this final word by the Supreme Court, it has been held that "released time" is constitutional unless characterized by elements rendering it otherwise, that its constitutionality must be tested by its particular factual aspects, that absences for such purposes are to be handled in the same manner as requests for absence on holy days or for any other legitimate cause, and that such a program can only be condemned on a finding that it is in aid of religion.[21]

As a general rule, therefore, the constitutionality of "released time" depends upon the facts of each particular program. A comparison of the facts of the *McCollum* case and the principal case shows the basis of each holding. In the former case there was (1) no underlying enabling state statute, (2) religious training took place in the public school building, (3) school officials supervised the religious teacher, (4) pupils were segregated in school according to religion, and (5) pupils were solicited in school for the instructions; whereas in the instant case, (1) there is an enabling statute, (2) instruction takes place off the school premises on private property, (3) the particular denomination selects its own religious instructor and curriculum, (4) there is no segregation according to religion (those wishing instruction are merely dismissed one hour earlier one day each week), and (5) there is no solicitation of pupils (parents sign a request, furnished by the religious group, that the child be dismissed, which request is presented to the school authorities at the beginning of the semester).

The "released time" program in New York City, being free from objectionable aspects, is therefore not a violation of the First Amendment. This decision is in accord with the view of the majority of the state courts, the law as laid down by the United States Supreme Court, and is a restatement of the general rule that "released time" programs are not per se unconstitutional.

EVIDENCE — JUDGMENTS — ADMISSIBILITY AND EFFECT OF A CRIMINAL CONVICTION IN A SUBSEQUENT CIVIL ACTION. — In an action for personal injuries sustained in an automobile accident, plaintiff's counsel inquired of the defendant operator whether he had been convicted of "dangerous driving" [1] in connection with circum-

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have in the execution . . . that close judicial scrutiny is demanded. . . ." *Id.* at 225.

[20] See note 15 *supra.*

[21] Lewis v. Spaulding, 193 Misc. 66, 85 N. Y. S. 2d 682 (Sup. Ct. 1948).

[1] The traffic regulations define "dangerous driving" as "driving, using or operating any vehicle or appliance or accessory thereof (1) in a manner which unreasonably interferes with the free and proper use of a private or public street or a footwalk thereof, (2) or unreasonably endangers the users thereof,