

October 2016

## Editorial Comment

Edward T. Fagan

Follow this and additional works at: <http://scholarship.law.stjohns.edu/tcl>

---

### Recommended Citation

Edward T. Fagan (2016) "Editorial Comment," *The Catholic Lawyer*: Vol. 9: No. 4, Article 2.  
Available at: <http://scholarship.law.stjohns.edu/tcl/vol9/iss4/2>

This Editorial Comment is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in *The Catholic Lawyer* by an authorized administrator of St. John's Law Scholarship Repository. For more information, please contact [cerjanm@stjohns.edu](mailto:cerjanm@stjohns.edu).

# Editorial Comment

“Father Regan is to be commended,” so stated Mr. Justice William J. Brennan, Jr., “for the keen, comprehensive and accurate analysis of my basic approach toward the solution of constitutional law problems which he makes in his forthcoming *Catholic Lawyer* article. While I make no comment on his interpretation of the opinions which I have written, I feel very strongly that he has caught the true essence of the legal philosophy which has always been my basic motivation.”

The occasion for the above comments by the Justice was a meeting which took place several weeks ago in Washington between him and the Editor of *The Catholic Lawyer*. The subject of their discussion was the article featured in this issue by John J. Regan, C.M. entitled “Freedom of the Mind and Justice Brennan.”

That which prompted the meeting was the fact that the findings which Father Regan reports in this article in the opinion of the Editor are of deep significance to the legal world. They are the product of a careful and searching examination of first amendment Supreme Court cases dealing with obscenity, the establishment clause and the free exercise clause. It was felt that added value would accrue to the article if Mr. Justice Brennan had an opportunity to criticize it prior to publication and make his comments known to our readers. Accordingly, a meeting was arranged with the Justice and galleys of the article were sent to him in advance of the appointed day.

Following his praise of Father Regan’s overall treatment of the subject matter, Mr. Justice Brennan commented on the issue raised by Father Regan with respect to the inadequacy of the censorship standards in the area of obscenity regulation. Mr. Justice Brennan admitted that further clarification of censorship standards must be made by the Supreme Court in the immediate future because of the importance of the matters involved. He stated that such additional determinations would therefore be forthcoming within the next two terms.

Commenting further on Father Regan's treatment of the constitutional guarantee of religious freedom, Mr. Justice Brennan expressed surprise that no mention had been made of *Sherbert v. Verner*.<sup>1</sup> In the opinion of the Justice the case of *School Dist. of Abington Township v. Schempp*<sup>2</sup> must be read as qualified by the *Sherbert* case. While technically the opinion in the *Schempp* case preceded the *Sherbert* case in time of promulgation, according to Mr. Justice Brennan the writing of the two opinions was done at the same time and each might well be considered as part of the same transaction. Consequently, much of the apparent rigidity of the *Schempp* neutrality pronouncement is in fact tempered by the affirmative guarantees set forth in *Sherbert v. Verner*.

Subsequent to the meeting when the Editor brought this last observation of the Justice to the attention of Father Regan, he was informed by the writer that the *Sherbert* case in his opinion was of such major importance that it merited separate consideration in its own right. In fact he had just completed a short article dealing with the *Schempp* and *Sherbert* cases for submission to another publication. He assured the Editor, however, that he would prepare an additional article on his interpretation of the *Sherbert v. Verner* case for publication in the next issue of *The Catholic Lawyer*.

The heartfelt thanks of the Editor and staff of *The Catholic Lawyer* are extended to both Mr. Justice Brennan and Father Regan for making this issue of *The Catholic Lawyer* of such special value. That both such busy men should give so freely of their time and efforts to a project such as this speaks well for the future existence of our American way of life. Without the self-sacrifice of dedicated men working constantly toward the preservation of essential freedoms those rights which many of us take for granted might soon perish from the face of this earth.

---

<sup>1</sup> 374 U.S. 398 (1963).

<sup>2</sup> 374 U.S. 203 (1963).