History of Private School Regulation in North Carolina

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EDITOR'S NOTE: The following research article was written in August, 1980 by David Morgan who, at that time, served as an intern in the North Carolina Office of Non-Public Education under the direction of Calvin L. Criner who was the supervisor of the State's non-public school office from 1964-1985. During fifteen years of Mr. Criner's twenty-one year tenure, the office was under the Department of Public Instruction.

The United States Supreme Court declared in May, 1954, that racial segregation of public school systems was unlawful. The next year it followed up that decision with a directive that integration of schools throughout the country be accomplished "*with all deliberate speed*." Twenty deliberate years later, when the Court's landmark decision had at last been consummated in cities, towns, and rural counties throughout the South, public schools were left crippled – socially and educationally - by a bitter, rancorous experience, and private education, all but defunct in the South a few years before, had experienced a dramatic rebirth. The history of the relationship between the State and private education in North Carolina is closely intertwined with the painful history of the desegregation of its public schools.

At the time the Brown v. Topeka decision was handed down, private schools occupied a position of relative insignificance in North Carolina and throughout the South. When discussion arose soon after that decision about the possibility of using private schools as an "*escape from a possibly unacceptable situation*"[1] – that of racially mixed public schools – news accounts put the number of private schools in the State at about thirty[2] – a highly unlikely figure in light of the fact that 163 schools reported to the Office of Non-Public Schools when it began operation a few years later, but indicative of how little note private education received from persons in positions of importance. As late as 1968, one study put North Carolina second to last of the fifty states in the percentage of its students in private schools.[3]

The decline of private education had closely paralleled the steady upbuilding of public schools in the State, just as its renaissance would later parallel the decline in public respect for public education. Contemporary documents indicate that there were probably about 200 academies, seminaries, and other private schools of various types in North Carolina in the early nineteenth century – usually small, local operations.[4] There would not be as many private schools in the State again until the 1970's. From the passage of the first public school law in 1839 to the institution of compulsory attendance in 1913, most of the private academies were gradually supplanted by or absorbed into the expanding system of public schools. Only three private schools in operation today have a continuous history of over 100 years: Salem Academy in Winston-Salem, a Moravian school for girls founded in 1772; St. Mary's College and High School in Raleigh, which dates from 1842; and Oak Ridge Academy near Greensboro, a military school established in 1852.

The development of western North Carolina as a resort area for wealthy Northerners, combined with the limited availability of good public schools in that area until well into the twentieth century, provided a ready clientele for several private boarding schools established around the turn

of the century, of which the Asheville School and nearby Christ School, both founded in 1900, are the oldest survivors. The country day school movement, a national phenomenon dating from the 1920's, showed up in North Carolina with the establishment of Charlotte Country Day in 1941. Similar schools were founded in other cities in the State in the next few years. These schools depended on the support of individuals possessing the financial resources and intellectual sophistication to expect for their children a more rigorous education than that provided in the public schools, and such individuals never inhabited North Carolina in sufficient concentrations to give the country day school movement more than moderate success. Parochial schools were established in most parts of the State at about the same time – a period when North Carolina was officially listed by the Catholic Church as a mission diocese. The earliest files of the Office of Non-Public Education show that in the early 1960's, and presumably for some years before, about half the private schools in North Carolina were parochial, and there were several Lutheran and Episcopal schools and a few country day and boarding schools.

By the time of Brown v. Topeka, the public school had become perhaps the most impregnable of American institutions – a bastion of middle-class virtues and patriotism. Private education found its usefulness in such a situation diminishing, particularly in the South where parochial schools remained relatively few, and private educators found little reason to expect of the future anything but continued decline.

Up to that time, there had never been a formalized, codified relationship between private schools in North Carolina and the State. In the early years, before the establishment of public schools, private academies occasionally received grants from local tax revenues. Throughout the history of private education, those responsible for the private schools were generally civic leaders with political influence or representatives of respected religious organizations, so there was never any serious effort by State officials to bring their operations under supervision. In any case, private schools by the 1950's were too insignificant a part of the State's education establishment to merit any special attention.

It is a little puzzling, then, to see a law appear quietly on the books in 1955 conferring on the State Board of Education far reaching powers of regulation over the activities of all non-public schools. For some time, there had been a proviso in the public school laws that compulsory attendance requirements could be met by attending non-public schools only if those schools had "*curricula and teachers that are approved by the county or city superintendent of schools or the State Board of Education*." In practice, no system of approval was ever implemented. The new 1955 law, however, clearly gave to the State Board the duty of "*regulating and supervising all non-public schools serving children of secondary school age, or younger*." Non-public schools were required to follow substantially the same procedures as public schools in pupil promotion, grading, conducting the course of study, and ascertaining the qualifications of teachers. The passage of this legislation was apparently not connected with any questions or reservations about the way the few private schools in the State at that time were operating.

These regulatory provisions were buried in a 174 page bill revamping the State's public school laws. As originally introduced, early in the 1955 regular session, the bill would have required private schools to purchase licenses, and operation of a school without a license would have been a misdemeanor punishable by fines. A House committee took the teeth of criminal prosecution out of the bill, substituted approval for licensure, and specified no penalties for non-compliance. The most widely noticed provision of the bill was one that gave complete authority over pupil enrollment and assignment to local school boards – an attempt to frustrate litigation aimed at forcing the State to integrate its schools – and the section about non-public schools went virtually unnoticed. The entire package breezed through both houses of the General Assembly with near-unanimous votes and the lack of serious legislative debate characteristic of major decisions in North Carolina State Government.

It seems likely, though, that the non-public school measure had been very seriously discussed and considered by the State officials who engineered its introduction and passage. If not, it was a fortuitous coincidence indeed by which non-public school regulation appeared in the law just in time to provide the perfect groundwork for the 1956 Pearsall Plan – a calculated proposal to save the public school system from integration by transforming it into a system of private schools.

In the wake of the shock waves that Brown v. Topeka sent throughout the South, the more ingenious Southern statesmen had begun to look into ways to circumvent the ruling, and by early 1955, the idea was being discussed that a system of schools might be exempt from the ruling if it were nominally in private control, even it if received indirect funding from tax revenues.[5] This idea became the cornerstone of the Pearsall Plan – a proposal hammered out by an Advisory Council appointed by Governor Luther Hodges and rubber-stamped by a typically uncritical General Assembly that met for a five-day whirlwind session in the summer of 1956. The intent of the legislation was perfectly clear; Governor Hodges told the General Assembly that the people of North Carolina expected them to do "*everything legally possible to prevent their children from being forced to attend mixed schools against their wishes*." He did not intend to stand idly by "*while our public schools are ruined in the course of a sociological experiment to be carried out at the expense of our children*."[6]

State officials in North Carolina sincerely believed, and with good reason, as events would eventually prove, that integration might cripple or even wreck the public schools. During a time when panic and talk of "massive resistance" was running rampant throughout the South, North Carolina leaders considered their Pearsall Plan a model of moderation and restraint. It had two major provisions: First, to provide State grants for the private education of two types of children – those assigned against their parents' wishes to integrated public schools, and those living in districts where no public schools were available; and second, to give local districts the option of voting to close their public schools. The plan was presumably drawn up with this last ditch scenario in mind: A district ordered to desegregate would vote to close its public schools, and those public schools would be resurrected overnight as private schools enrolling the same pupils, staffed by the same teachers and principals, and funded by State grants to the students (since public schools would no longer be available in the district). Since grants of public money were involved, this creation of a system of quasi-public schools under nominal private control would require the legal transplantation of the State's supervisory authority over public schools to the non-public sector – something that the non-public school regulatory law, enacted a year before the Pearsall Plan, provided for very neatly and conveniently. It seems clear, then, that a detailed scheme of private school regulation entered the law books in North Carolina not because lawmakers felt a check was needed on private schools actually operating in the State, but as part of a contingency plan to sidestep the desegregation of public schools on the basis of a legal technicality.

A federal court later found the Pearsall Plan unconstitutional; no grants were ever made, no schools closed under its provisions. But the non-public school regulation law, whose "raison d'etre" evaporated when the Pearsall Plan was struck down, remained on the books, and later was enforced to such an extent that it became, Ironically, a thorn in the flesh of a plethora of new private schools established to provide a way out of the very turmoil that the drafters of the Pearsall Plan had sought to avoid.

The establishment within the Department of Public Instruction of an Office of Non-Public Schools in 1961 marked the first serious effort at enforcement of the 1955 law. This Office, whose responsibility it was to supervise and regulate all private schools in the State, opened with a staff of one, and has never employed more than three persons. For the first two years of its operation, the Office simply collected reports from the schools; it was only in 1963 that it began classifying schools as approved and non-approved. That year, the 1955 statute was fleshed out in a set of "minimum

standards" published by the Department in the form of a small booklet (appendix B). These standards remained unchanged until 1978 when several of the regulations were struck down by court order as outside the State's regulatory authority. On the face of it, the standards appear quite oppressive. The private schools were to have textbooks and library supplies "*substantially the same in quantity and quality as those provided in the public schools*," pupil-teacher ratios no higher than those in similar public schools, and a "*course of study equal to or substantially the same as that provided for children of corresponding age and grade in the public schools*." These regulations seem to demand of the private schools, in several critical areas, uniformity with the public schools – a goal hardly consistent with the aim of the public educational establishment to promote widespread acceptance of the pluralism of American society.

The private schools, however, never felt the full potential impact of the laws and standards. Officials dealing with the private schools were usually very lenient in their application of the regulations, and many requirements of the law and standards were never enforced. No schools were ever denied approval status, for example, because their textbooks were considered inferior to those chosen for public school use, or because their libraries had fewer books than the public school libraries. Dr. Jerome Melton, Deputy Superintendent of Public Instruction, acknowledged that "*we were derelict in our duty*" in the matter of enforcement of the regulatory law and standards, and that "*someone probably should have been put in jail*." Dr. Melton indicated that the reason the Department never regulated the schools to the extent required by the law and the standards not enforced was that, had they done so, the law and those standards would not have been allowed to stand.

When a non-public school was not approved, it was most often because it employed uncertified teachers. In many cases, though, schools received approval even when they did not meet fully the certification requirement. Mr. Calvin Criner, Director of the Office of Non-Public Education since 1964, testified in 1978 that "*the interpretation for meeting the minimal standard was quite generous in a number of cases*," and that "*cooperation and the desire to do those things that will make a school better have governed in many cases judgments in this area*."[7]

There were no legal consequences for a school that failed to receive approval. In a typical year in the 1960's, about a third of the State's private schools would be denied approval. A non-approved school, technically, was operating in violation of the law, and its students were not meeting compulsory attendance requirements, but no legal action was ever taken against such a school or against the parents of children attending it until a group of fundamentalist Christian schools refused to send in reports in 1977. Dr. Ed Ulrich, former administrator of Goldsboro Christian School, recalls that when his school began to receive applications from apparently well-qualified graduates of a Pennsylvania Bible college who were not, however, eligible for North Carolina teacher certificates, his school accepted non-approval status rather than forego the opportunity to hire a number of good teachers. The high rate of non-approvals among the private schools indicates that many of them did not take the approval process seriously and were not particularly concerned about the consequences of failure to receive approval.

The rate of approval improved. However, in the early 1970's, the Annual Fall Report forms, used as the basis for the granting or denial of approved status, began to become longer and more complex. By 1977, schools were expected to explain in a 13 page report whether, for example, the laboratory method was used in secondary science courses, whether students received televised instruction, and what sorts of programs for the handicapped were provided. The increasingly burdensome report forms were reflective of a feeling of growing mistrust and dislike for private education among officials in the Department of Public Instruction.

It was at about the time of Dr. A. Craig Phillips' ascendancy to the position of State Superintendent in 1969 that the Department began to be colored by a decidedly inimical attitude

toward private schools. Deputy Superintendent Melton acknowledged in an interview, "*I'm biased as hell*." The Department continued during this period, of course, to be responsible for the supervision of private schools. It is easy to see why those schools might have questioned the fairness of the treatment they received from officials who found their programs, philosophies and existence, for the most part, reprehensible.

Public educators were put in a state of concern, or by some accounts, near-panic, by a rapid burgeoning of private schools in the late 1960's and early 1970's that threatened to siphon off the public schools' best students and sources of support. From 1968 to 1972, private school enrollment in North Carolina nearly tripled – from 18,000 to 50,000. The private enrollment boom was closely tied to the progress of racial integration in the State. After a U.S. Supreme Court decision in 1968 striking down most freedom of choice plans, massive desegregation plans were put into effect in urban areas throughout the State, the most notable of which was a bitterly contested, court ordered plan implemented in Charlotte in 1970, and based on a system of precise mathematical ratios and forced busing.

The private schools opened at this time were not, as Dr. Melton suggests, designed solely as "*a pop-off valve for the most arrogant whites to escape*." Parents had a number of reasons for withdrawing their children from public schools. Some simply did not want their children to attend school with black children, and for this reason the new schools, which were usually all white, were often called "segregation academies." Some parents did not want their children riding buses for long distances to attend school in neighborhoods they considered unsafe, and the mushrooming of private schools usually made it easy for these parents to find a suitable private academy in their own neighborhood. Other parents were concerned about the relaxation of discipline and lowering of educational standards in public schools, problems that can be traced at least in part to the turmoil and unrest that accompanied integration. And some parents, finally, unhappy with the secularization of public education, enrolled their children in fundamentalist Christian schools. These schools, with emphasis on adherence to traditional moral values and a literal Biblical faith permeating the entire curriculum, eventually became the most numerous of the new schools, and would later occupy the vanguard in the revolt against State regulation.

It was this proliferation of private schools that prodded the Department to tighten its control of the schools, and that tightening pushed the schools toward open revolt in the late 1970's. The actions of Department officials were predicated, at least partly, on a sincere belief that the new schools provide inferior education. Mr. Tom I. Davis, the Department's publicity director, believed it is the State's duty to regulate private schools because "*20,000 to 40,000 kids are not being looked after at least to the minimal extent, like the other million are*." He deplored the State's inability to regulate the schools effectively under the new law because "*it's not fair to the State to say that a child that goes through these gosh-awful schools is a citizen*." Deputy Superintendent Melton had no confidence in the new schools and considered them "fly-by-night operations." A book called <u>The Schools That Fear Built</u>, written in 1975, typifies the attitude of many public educators toward the new private schools in decrying their "*narrow education inadequate for the modern world*."[8] The authors, like many public school officials, are particularly offended by the fact that the new schools do not fall in line with the progressive aspirations that the educational establishment finds suited for modern society: "*They seem narrow and insular at a time when human perceptions are widening. Their self-satisfaction is monumental when the rest of society is questioning itself and seeking new directions. They mistake old attitudes for old virtues, looking backwards as we hurdle forwards*."[9]

Public education officials, in their zeal to use the mold of the public school to shape society into what they see as the form of the future, have tended, first, to ignore the possibility that motivations other than racial bigotry may have caused parents in large numbers to take their children out of public schools; second, they have tended to gloss over the successes of private schools in areas where the public sector seems to be failing, notably, the attainment of basic skills in

language and mathematics, as measured by achievement tests, and the maintenance of reasonable standards of discipline; and finally, they have failed to recognize the rejuvenation of private schools, in the words of Terry Sanford, "*as an indictment of the public schools for failing, or appearing to fail, to respond to the needs of an important element of the community, and not solely an immature attitude on the part of disgruntled racists, as some would contend*."[10]

The Department's perception of private education as a dangerous, regressive institute, whatever the basis of that perception, caused Department officials in the 1970's to look for new ways to control private schools, and to suggest or implement measures that some private schools would find excessive and unjust. Leaders of many of the fundamentalist Christian schools came to view the attitudes and activities of the Department as part of a conspiracy among those in positions of power – people generally unsympathetic to their religious views – to drive their schools and even their churches out of existence. It was as an act of desperation, then, a defiant challenge to what they perceived to be an entire establishment lined up against them, that 83 fundamentalist school leaders, normally the most law abiding of citizens, refused to send in the mandatory Annual Fall Report in 1977. This revolution of 1977, like that of 1776, arose out of no single incident, but grew out of an accumulation of grievances, frustrations, and humiliations dating back several years.

The first major point of contention was teacher certification. The Department of Public Instruction proposed in the spring of 1974 to do away with emergency certificates for teachers-certificates that were issued when it was impossible to hire a teacher meeting the usual requirements for certification. Independent schools of the prep school type often sought teachers who were graduates of good liberal arts colleges, and therefore usually lacked the professional education courses – courses whose value is questioned by many experts – normally required for a State certificate. Many of the fundamentalist Christian schools in the State hired graduates of Bible colleges for teaching positions, because such persons usually shared the religious commitment that these schools considered essential in all staff members. Most Bible colleges, however, were not accredited in such a way as to make their graduates eligible for normal certificates in North Carolina. Emergency certificates had been granted to teachers in both the independent and the fundamentalist schools, allowing those schools to continue to operate legally with the kinds of teachers they thought best qualified for the brand of instruction they offered. The proposed elimination of emergency certificates would have had no real impact on the public schools – there was a surplus of certified teachers at the time – but it would have imposed a great hardship on many private schools. A number of private school leaders interpreted the move as an attempt by State officials hostile to private education to frustrate their programs, and asked that the proposal be reconsidered.

A study commission, to be chaired by Senator Tom Strickland, was created by the General Assembly in 1974 and asked to make a recommendation on the certification issue, as well as to discuss in general the relations of private schools with the State and with public schools. The Strickland Commission received testimony from, among others, Dr. A Craig Phillips, Superintendent of Public Instruction, who "*recognized that some non-public schools seek graduates of Bible colleges whose beliefs coincide with their school's philosophy, but insisted that the desire to indoctrinate children in particular religious beliefs does not provide a sound instructional program*"[11] – a comment indicative of the Department's intolerance and insensitivity toward the fundamentalist schools.

In spite of Dr. Phillips' remarks, the Commission recommended in 1975 that the system of emergency certification be replaced by a similar system of temporary certification which would allow private schools to continue legally hiring teachers not certifiable by normal State standards. The State Board of Education followed the Commission's recommendation and the issue was defused, at least temporarily. The Commission made several fairy innocuous additional proposals, all of which were ignored, and then disbanded.

The Strickland Commission hearings were a turning point in the history of the relation between the State and private schools in North Carolina because they marked the first mobilization of private schools in opposition to State regulation. The Reverend Kent Kelly, a pastor and school administrator in Southern Pines, "*traveled over 5000 miles in two and a half weeks – from the mountains to the coast – visiting every Christian school in North Carolina to sound the alarm*."[12] The Reverend Kelly, the Paul Revere of the Christian school revolution, and later to be a major leader in its legal and political battles, then appeared before the Strickland Commission with a petition "*supported by 10,000 signatures seeking relief from any connection with public education and the Office of the Superintendent of Public Instruction*."[13] As the Reverend Kelly later put it, "*The Lord gave the victory and the State backed down – but only temporarily.*"[14]

The Department of Public Instruction had for some time had a practice of issuing, under special circumstances, "letters of non-standard rating" to teachers in public and private schools who could not qualify for any type of State certification. The State Board ordered this practice abolished in 1972 on the grounds that it violated existing law. Mr. Criner, Coordinator of Non-Public Schools, understood at that time that the practice had indeed been eliminated in the public schools, and he informed private school officials that letters of non-standard rating were no longer available. Mr. Criner, then, was among those surprised to hear, during testimony before the Strickland Commission in 1974, that the Department was still issuing such letters to public school teachers two years after the Board's directive. Mr. Criner was then assured that the practice had now definitely ended. In 1978, however, it was revealed that the practice had continued for several years after those assurances were made. For some time, then, there was apparently a double standard in the granting of non-standard ratings. Mr. Davis of the Department of Public Instruction, when interviewed recently, seemed unaware that such ratings had ever existed, and Dr. Melton indicated that those granted non-standard letters to teach in public schools were vocational teachers with expertise in specialized trades, a situation not applicable to the private schools. It appears, however, that some prospective public school teachers who failed the National Teachers Examination were given the letters so that they could be allowed to teach without valid certificates. No such exceptions were available to private schools. They had been advised by Mr. Criner, on the basis of information he received from his superiors, that non-standard ratings had been abolished for all schools.

By the time of the Strickland Commission hearings, the private schools in the State had begun to coalesce into organizations that would be active in matters of litigation and legislation affecting private education. The North Carolina Association of Independent Schools, whose members must be accredited schools, was organized in 1970. Two groups of fundamentalist Christian schools were formed – the North Carolina Association of Christian Schools, headed by Dr. Edward Ulrich; and the Organized Christian Schools of North Carolina, with the Reverend Daniel D. Carr as President. A major difference between the two groups is that most schools in the Reverend Carr's organization use the Accelerated Christian Education curriculum – a set of programmed materials that allows a single teacher to work with students at a number of grade levels studying on their own. Schools in Dr. Ulrich's organization, on the other hand, emphasize traditional classroom teaching; Dr. Ulrich believes that "when you do away with the primacy of the teacher you are getting away from what God has ordained." The Reverend Carr's group tends to be more politically active, but the two groups cooperate closely on matters of mutual interest.

At the request of private school leaders, the Department of Public Instruction decided in the spring of 1977 to establish a 16-member Advisory Council on Non-Public Education. The two Christian school organizations were offered one position each on the Council, but both eventually declined to participate, believing that the Council would be dominated by representatives of interests sympathetic to public education, and that it was intended not as a sincere effort to receive input from

the non-public schools but rather as an attempt to isolate and embarrass those opposing State regulation.

By this time, the fundamentalists had become aware that their problems with the State were more serious and more irreconcilable than they had previously realized. In June of 1977, Kelly, Carr and Ulrich, who had emerged as the principal leaders and spokesmen for the fundamentalist schools, arranged to meet with Mr. William B. Ball, noted constitutional lawyer who specialized in cases involving infringement of religious rights, at his office in Harrisburg, Pennsylvania. Mr. Ball was best known for his defense before the U.S. Supreme Court of an Amish community in Wisconsin v. Yoder, a landmark case in which the Court agreed that the Amish were justified in the practice, predicated on their religious beliefs, of withdrawing their children from school at the age of 14 – a violation of compulsory school attendance laws. Mr. Ball convinced the North Carolina school leaders that the crucial issue in their case was that of State approval of private schools. In a 1976 case, the Supreme Court of Ohio had ruled in favor of a group of Christian schools in the State which believed that State approval of their schools was a violation of religious freedom. The Christian schools' case, however, had been weakened by the fact that they had sought approval and cooperated with State officials until shortly before litigation began – an indication, the State's attorneys had argued, that their religious objections were not really very serious.

The North Carolina fundamentalists decided they needed to establish as soon as possible their opposition to State regulation and approval; and, encouraged by the success of their Ohio counterparts, voted in the fall of 1977, just as the school year was beginning, to refuse to submit the mandatory Annual Fall Reports sent out by the Office of Non-Public Education. The 83 schools that participated in the protest were automatically denied approval and stood in violation of State law. In the face of organized defiance of the law, State officials, who in the past had virtually ignored the many isolated instances of non-approval, felt that legal action would be necessary. There were several attempts at negotiation in early 1978. In February, the State Board of Education, in an effort to placate the fundamentalists, considerably simplified the reporting forms. But, the schools were not satisfied. They submitted instead a form they had prepared themselves, providing only the most basic information, which the State refused to accept. The State Board gave the schools an ultimatum to conform with State regulations by March 23, 1978, or face court action. The deadline passed, and the recalcitrant schools did not comply with the law. "*The Board has made a decision to take them to Court,*" Board Chairman H. David Bruton told reporters. "*The issue is about the State's right and duty to see that its citizens are educated. There is no question of religious freedom; it is an education question.*" In April, the State filed suit in Wake County Superior Court against eleven schools representative of those refusing to report, and the fundamentalists retained Mr. Ball as their attorney.

Many State officials underestimated the persistence, zeal, intelligence, and financial resources of the fundamentalists. As the Reverend Kelly liked to repeat, it was for them a "life or death" issue. Their commitment to the religious ministry of their schools was total. When they became convinced that the schools were being threatened by State interference, they were willing to make great sacrifices to end that interference. They financed their legal and political campaigns at first through contributions taken in the churches, and later mainly through their schools' fee structures.

Meanwhile, the State and the private schools had become embroiled in another controversy – over state-mandated competency and achievement testing. In its 1977 session, the General Assembly, at Governor Jim Hunt's behest, instituted a system of required competency tests which high school students would have to pass before graduating. The bills instituting the testing programs left it to the State Board of Education to decide whether private schools would be required to participate: "*The State Board of Education may require the implementation of the testing program contemplated in this act in the non-public schools supervised by it.*" But the competency test bill, in

another clause, hints very strongly that private schools were meant to be included: "*The State Board of Education shall adopt tests or other measurement devices to ensure that graduates of the public high schools and graduates of non-public high schools supervised by the State Board of Education possess those skills and that knowledge necessary to function independently and successfully in assuming the duties of citizenship.*" Mrs. Betty Owen, Education Adviser to the Governor, says that the testing program had originally been intended to apply to public schools only.

The State Board, however, voted overwhelmingly to include private schools in the achievement testing program after being told by the chairman of the Annual Testing Commission that it would be "grossly unfair" to test only the public school students. This created an uproar among private school leaders, not so much because they objected to having their students tested as out of resentment at having the requirement imposed upon them without consultation. The Advisory Council on Non-Public Education, whose ostensible purpose was to give interested parties an opportunity for input on issues involving private schools, was never called together to discuss the testing program – certainly the most important issue involving private schools that had arisen since the Council was created. A Department of Public Instruction official told Mr. Joseph Lalley, President of the North Carolina Association of Independent Schools and a leading opponent of State mandated testing for private schools, that the Advisory Council was just that – advisory – and that the Department was not required to call on it except when it needed its advice.

Mr. Lalley believed the inclusion of private schools in the testing programs would lead to unfair comparisons between public and private schools and constitute an invasion of the private schools' privacy. Christian school leaders felt the testing program would be additional infringement of their religious liberties, and found certain questions from suggested tests morally offensive. The State Board, in the midst of these objections and in light of an opinion from the Attorney-General's office that its original decision had not been made in accordance with administrative procedures required by law, announced it would reconsider the decision and hold public hearings on the issue.

A crowd of 500 showed up for the public hearing on November 10, 1978, in the tiny Highway Department auditorium. Of the 66 speakers, two spoke in favor of requiring testing for private schools. No State Board members were present to hear the speeches, and the Board voted at its next meeting to require the tests for private schools beginning in the 1978-79 school year.

The fundamentalist school organizations filed suit against the state over the issue in December, 1978. The question was eventually resolved by the non-public school law passed by the 1979 General Assembly. The new law's provisions regarding testing, which satisfied the private school leaders and allowed the testing proponents to save face, required the private schools to administer standardized tests but allowed each school to choose its own test and determine its cut-off score for high school graduation.

Probably the fundamentalists' most impressive show of strength took place April 26, 1978, when between 4,000 and 5,000 Christian school supporters converged on the Wake County Courthouse during the preliminary hearings in the case of the schools that had refused to file reports. The crowd, which had gathered to lend moral support to the cause, had to be dispersed by police.

The trial itself began on July 24, 1978, and lasted four days. The State's attorneys, armed with the experience of having recently attended the trial of a nearby identical test case in Kentucky, established with ample persistence that the fundamentalists had no real opposition to the way the regulations were actually being administered; and that they had difficulty identifying actual instances of infringement of religious freedom. The fundamentalists were primarily interested in demonstrating the potential for infringement in the existing laws and standards. Judge Donald L. Smith, basing his decision mainly on the question of actual infringement, agreed with the State.

Although he struck down several of the standards that had been in effect since the early 1960's, he allowed most of the framework of State regulation to remain intact, including the requirements for teacher certification and approval of program of studies along with practices which were the basis of the fundamentalists' objections.

It is interesting that in last minute negotiations to settle out of Court, the State offered to reduce greatly the scope of its regulatory authority. According to Deputy Attorney General Edwin M. Speas, the State held out for certain basic standards regarding textbooks, supplies, teachers, and courses. By the account of Reverend Kelly, who also participated in the negotiations, "*the State cast aside the question of teacher certification, textbooks, curriculum standards*"; and "*State attorneys said they had been instructed to give up anything but 'the power to supervise and regulate'*."[15] The suggested compromise, whatever its nature, was rejected by the fundamentalist leaders at a meeting two days before the trial, although serious consideration had been given to accepting it and avoiding the litigation.

Confident in the idea that a case based on constitutional principles can seldom be won in a lower court, and buoyed by a decision that amounted to an unconditional victory for the Christian schools in Kentucky, the North Carolina fundamentalist leaders appealed Judge Smith's decision to the State Supreme Court. Before the appeal could be heard, however, the General Assembly took action that made further litigation unnecessary.

Early in 1979, the Christian schools shifted their attention to the political arena, and it was there that their efforts were most successful. In March, bills were introduced to replace the 1955 regulatory statute with two separate laws – one for religious schools and another for all other private schools – which would abolish all curricular and other educational standards and leave only a set of basic requirements regarding health, sanitation, and testing (Appendix C). After 88 days of personal lobbying by the Christian school leaders and record volumes of mail, both Houses passed the bills easily – by near-unanimous votes in the Senate and comfortable majorities in the House. In the Senate, where the bills received special attention from the presiding officer, passage came very quickly; but there was a delay of about two weeks in the House Education Committee. Representative Margaret Tenille, Chairman of the Committee, says she was criticized by the fundamentalists for holding the bill up, but maintains she gave it fair treatment – the same treatment she would give any similar bill – and that she felt an issue of such significance merited careful discussion. As it turned out, however, so thoroughly had the members of the committee been lobbied that most were committed to support the bills before the committee discussion ever took place.

Although the fundamentalists were the most vociferous advocates of the bills, the backing of influential independent school leaders was also important, and the two groups cooperated in their efforts. The Reverend Carr said to Mr. Lalley: "*We have to be brokers of noise; you have to be brokers of finesse*." Mr. Lalley acknowledges, however, that the change in the law would never have come about had the Christian schools not taken the initiative and contributed most of the resources and work. Only to them was regulation ever a "life-and-death" issue. The lopsided votes for the bills were due primarily to the impressive show of public support they received, not to a great deal of enthusiasm for the legislation itself. A number of legislators were uncomfortable with their support of the bills, and many now say they regret their decisions and would vote differently if given another chance. Despite a spate of newspaper articles and editorials with titles like "Deserting Children's Rights," "Education Quicksand" and "Politics Triumph Over Reason in N. C. Legislature," the bills were given final approval on May 1, 1979.

The new law carefully states that the responsibility of inspecting and working with the private schools is to be vested in a person "designated by the Governor," not in the State Board of Education as the old law provided. Governor Hunt took advantage of this provision to move Mr.

Criner and his office out of the Department of Public Instruction and into the Office of the Governor in October, 1979 – a move opposed by the Department but appreciated by private school leaders, many of whom believed they could never receive fair treatment from most Department officials, but felt reasonably comfortable working with Mr. Criner.

It is true, as editorial writers throughout the State chorused during and after passage of the bills, that the new law could easily be abused. There are loopholes in it – particularly its failure to provide for a minimum school day or for any curricular standards – that could eventually cause problems that probably could not be dealt with by existing fraud laws, as some have suggested. At present, though, there is no evidence that any such problems exist; and, if anything, private schools in the State seem to be carrying out the function of preparing children for the basic duties of citizenship more capably than the public schools. There would seem to be little advantage, then, to rekindling the passions and animosities associated with this issue by attempting to rewrite or refine the law at any time in the near future.

The history of private school regulation in North Carolina, in many ways, is the story of bureaucracy at its worst. It shows how needless regulations become accepted; how they are made needlessly more complex and burdensome; and how the very fact of their existence comes to be taken as proof of their usefulness. It shows how officials of administrative agencies – even, in certain cases, officials who are popularly elected – tend to become remote and grow insensitive to expressions of public interest and concern; and how they sometimes consider it their duty to work against segments of the public they should be trying to serve. On the other hand, the history of the regulation controversy, especially in its most recent chapters, can be seen as a vindication of those closest to the avenues of real political power – in the General Assembly and in the Governor's Office – and of their role as by-passers around the bottlenecks of bureaucratic intolerance and insensitivity: for those persons, whether willingly or reluctantly, eventually conformed to the will of the private citizens most vitally affected by the issue.

John Stuart Mill, a nineteenth-century British philosopher, wrote something remarkably similar to the recent rhetoric of Christian school leaders in North Carolina:

> "A general state education is a mere contrivance
> for molding people to be exactly like one another:
> and as the mold in which it casts is that which
> pleases the predominant power in the government,
> whether this be a monarch, a priesthood, an aristocracy,
> or the majority of the existing generation; in
> proportion as it is efficient and successful, it
> establishes a despotism over the mind leading
> by natural tendency to one over the body."

His point, and that of the Christian schools, however exaggerated, should not be ignored. It is important to keep in mind that close to the promise of public education as the foundation of a democratic citizenship – a promise brought most nearly to fulfillment in modern America – always stands the danger that it may be made to serve, as it has in totalitarian societies, as an agent of uniformity and indoctrination. This kind of indoctrination Dr. Phillips deplored in his testimony before the Strickland Commission is fine – as long as the people are free to choose the brand of indoctrination – public or private, religious or secular – that they want themselves or their children exposed to.

A strong, responsible system of private education is essential because it provides an alternative, a free choice. The Reverend Kelly made it clear in his testimony in the 1978 trial that

what he means by education is something entirely different than what Dr. Melton or Dr. Phillips mean:

> "I have a definition of education based on the Bible, I believe. I believe personally – and this is what we teach – that education is the acquisition of true knowledge and true wisdom. Now, you might be gathering facts as far as a "person perceives them in other areas, but true education is only that, and we believe that you can only get true wisdom and true knowledge from the Word of God ultimately."[16]

An open society has room for such alternative interpretations of what an education should consist of and be aimed toward; and an educational system depends for its openness and vitality on the availability of schools that are not part of the public system; and have methods, philosophies, biases, and prejudices different from those of the public system. If, then, private schools are educating responsibly, they should not be treated with contempt but valued and encouraged.

EDITOR'S NOTE: To now learn about later historic events impacting the legalization of home schools starting in 1985, read "Home Schools in North Carolina." To learn more about the later history of the State non-public school office, read "History of the North Carolina Division of Non-Public Education."

NOTES

[1]From the report of the Governor's Advisory Committee on Education, as quoted in the News and Observer, April 6, 1956.
[2]News and Observer, April 6, 1956.
[3]The study is found in Statistics on Non-Public Elementary and Secondary Schools, 1970-71, a publication of the National Center for Education Statistics.
[4]Charles L. Coon, North Carolina Schools and Academies, 1790-1840 (Raleigh: Edwards and Broughton Printing Company, 1915).
[5]See, for example, David Brinkley's editorial in the News and Observer, May 6, 1955.
[6]From Governor Hodges' address to a joint session of the General Assembly, July 23, 1956, as recorded in the Senate Journal.
[7]The State of North Carolina v. Columbus Christian Academy et al., Wake County Superior Court, July 24, 1978, pp. 133-34 of the trial transcript.
[8]David Nevin and Robert E. Bills, The Schools That Fear Built (Washington, D.C.: Acropolis Books, 1976), p. 3.
[9]Ibid., p. 88.
[10]Ibid., p. vii.
[11]Legislative Report of the 1975 Study Commission on Public and Private Schools, pp. 15-16.
[12]Kent Kelly, The State of North Carolina v. Christian Liberty (Southern Pines, N.C.: Calvary Press, 1979), p. 18.
[13]Legislative Report of the 1975 Study Commission on Public and Private Schools, p. 21.
[14]Kelly, op. cit., p. 18.
[15]Ibid., p. 27.
[16]The State of North Carolina v. Columbus Christian Academy et. al., trial transcript, p. 361.