

MEMO

March 10, 1988

TO: Linda Kay, State Library  
FROM: Karen Pierce, Attorney General Library *K.P.*  
SUBJ: Copies of New Jersey Documents re Public Education

The enclosed papers were prepared by educators from New Jersey institutions for the Joint Education Committee during hearings in 1974. The subject is the "thorough and efficient" system of public schools in New Jersey.

Several months ago, you or someone in the New Jersey Documents department tried to locate these documents (which were noted in a May 14, 1974 hearing before the Joint Committee; call number 974.90 E24 1974t), along with some other related documents from your collection. These papers were not among those located at that time. I subsequently made a few phone calls around the state and obtained copies.

Deputy Attorney General Bertram P. Goltz, who requested these documents for his research on this issue, has urged I send you copies of these papers for the State Library's collection. Per his request, I am also sending copies to the Attorney General's Library in Trenton.

If you have any questions regarding these papers, feel free to call me.

Thank you again for your help in this and all matters.

cc: Bertram P. Goltz, Senior Deputy Attorney General (w/o encl.)  
Moira Strong, Chief of Research Services

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JOINT EDUCATION COMMITTEE

Staff Note #7

Re: Robert L. Granger - Response to Questions 2 - 7e - 8 - 9

The author introduces his paper with a review and analysis of the sections of the court decisions in Robinson v. Cahill which deal primarily with educational questions. He then answers each question in turn.

- 2a - What did the term "thorough and efficient" mean when it was first introduced into the State Constitution in 1875?

Education in the 19th century generally meant the drilling of pupils in basic skills of reading, composition, arithmetic, and spelling, with some attention to practical and physical arts and activities. Minimum literacy skill was the predominant educational goal. Concepts of social values and scientific facts were treated simplistically. The broader goals of today's educational system, including critical thinking, inquiry, self-enrichment, and the concept of education as a device for social mobility, were not recognized.

- 2b - Have changing conditions changed the meaning of the term ("thorough and efficient")?

Sweeping changes have been made in the curriculum of the public schools and in the concepts of learning theory on which the school system is based. The transfer of facts through drill has become less important, as other ideas, such as learning based on experience, progression from simple to complex ideas, and other principles, are applied.

- 2c - To what extent has the Supreme Court broadened, limited, or otherwise changed the meaning of the term ("thorough and efficient") by its opinion in Robinson v. Cahill?

The court decisions neither broaden nor limit the term, but they do provide a better definition of it. The court, in specifying that "thorough and efficient" should include "...that educational opportunity which is needed to equip a child for his role as a citizen and as a competitor in the labor market" probably did not intend to limit public education to these goals.

- 7e - What is meant by "equal educational opportunity"?

The author presents a word-by-word definition:

equal - means "equivalent", that is, something equal in value, force or meaning; it does not mean "identical", that is, something exactly alike or the very same.

education - means the guidance of learning activities toward established end results; an essential set of goals was defined by the court as equipping a child for his role as a citizen and as a competitor in the labor market.

opportunity - means the clear provision for a reasonably favorable learning circumstance for all children. Individual children may have varying performance potentials, due to varying genetic or environmental factors, and education can support, enhance, and ameliorate these differences only to a limited degree. But "equal educational opportunity" requires that there be no intentional or persistent discrimination against any individual or class, whether defined by physical characteristics, cultural differences, functional ability, or value differences.

While the Legislature should be able to resolve questions of cognitive educational goals (basic skills, such as reading) and psychomotor educational goals (physical skills) relatively easily, affective educational goals (attitudes) are much more difficult to handle.

- 8 - Does the word "thorough" apply to the extensiveness of the school experience made available or to the intensity of effort in particular areas of study?

The author concludes that defining "thorough" in terms of intensity of effort in particular areas of study would be in accordance with 19th century concepts of education which emphasized limited sets of cognitive goals and functional skills. However, education today recognizes that continually changing conditions makes the acquisition of a fixed body of knowledge a "futile and non-productive pattern for organizing curriculum and instruction". Furthermore, more modern educational approaches place emphasis on methods of inquiry rather than the acquisition of facts. He concludes that the word "thorough" must be interpreted in terms of the extensiveness of the educational opportunity made available, rather than the intensiveness of effort in particular areas.

- 9 - Does the word "efficient" apply to all activities of all public schools in the state, or might its application be limited to only the State-funded portion of a public school activity?

While the author supports the idea of local leeway, he points out that the courts may be saying that educational opportunities must be adequate for all children before they can exceed an adequate level for some. Standards of efficiency should apply to all educational programs, although there are practical difficulties in the magnitude of the evaluation program which would be necessary to insure that such standards are met universally. This may force an initial evaluation program to be restricted to the State-supported portion of a school program, with the consequent danger of concentrating resources and narrowing the program to those elements which will be evaluated.

KEAN COLLEGE



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To: Joint Education Committee  
Legislative Services Agency

From: Dr. R. L. Granger, Dean  
School of Education

Date: May 1, 1974

Re: Response to Selected Questions on the  
Robinson v. Cahill Issue

### Introduction

I am honored to respond to questions regarding the "thorough and efficient" issue before the legislature of New Jersey. All informed educators and legislators are aware of the extreme import of this matter.

It is my intent to present as fully as possible an objective perspective in my statements responding to the designated questions as opposed to an advocacy position. Hopefully my current educational responsibilities as Dean of Education, Professor of Educational Administration and school board member in Wyckoff, N. J. will assist in presenting such a generally neutral position. The generalist frame of reference which I will employ will also reflect, I expect, my own advanced specialized training and research in general administration, administrative theory and system theory.

### A. General Statement

The primary research which I undertook in preparing this statement was in the form of a careful reading of the Botter Opinions and the New Jersey Supreme Court affirmation. Rough drafts of proposed changes in the state Administrative Code were studied also. Even though I am presenting a professional rather than a legal opinion it seemed to me to be necessary to review the emphasis stressed in the above opinions, noting their principal points of agreement and, equally important, their differences in both substance and emphasis.

Judge Botter's opinions and conclusions were developed from a base recognizing the importance of compliance with the commanding statement regarding "thorough and efficient" education in the New Jersey Constitution. He also stressed the legal significance of the Federal Constitution's provisions for equal protection under the law. Judge Botter stated that any reasonable basis for state aid to

education must be related to the purposes to be served. A critical statement among his opinions was that "thorough means more than simply adequate or minimal." He asserted that even with full funding of the Bateman formula there probably would be disparity of funding in New Jersey that denies equal protection under the law. Judge Botter stated that legislation must not be arbitrary and that the present system of tax funding is based on "haphazard distribution of property wealth."

Judge Botter made several important statements in the realm of professional education. He included all educational operations within the public school in his rendered opinion. He implied the ready construction of an adequate and effective system of evaluation wherein "progress can be measured and enforced by rules and regulations." He noted that his conclusions regarding the need for change were based on an apparent disparity which denies equal protection under the Federal Constitution. This disparity opinion was partially based, according to Judge Botter, in "educational probabilities and expert opinion."

It is important to note also that the trial court opinion did not preclude the legislature from adopting any reasonable method which complied with State constitutional and equal protection conditions. Judge Botter did caution, however, that equalizing financial inputs may not assure thorough and efficient education.

The Supreme Court reinforced the trial court opinion that educational quality is dependent upon financial input even though other factors, natural and environmental, prevail. They agreed also that equal protection dictates some essential degree of statewide funding uniformity and that all state aid schemes must neutralize local inequities.

In the area of funding the Supreme Court cited developments in the Texas (Rodriguez) case which reaffirm the concepts of local option and provision for basic or minimum educational skills only. They caution in interpreting the equal protection clause as supplying "categorical answers in the vast area of human needs."

The Supreme Court's educational opinions were perhaps a bit more cautious than those of the trial judge. They concurred that the "thorough and efficient" statement in the New Jersey Constitution is more compelling in regard to education than national constitutional provisions. The Supreme Court opined that education in a contemporary setting should (minimally) equip a child for his role as a citizen and as a competitor in the labor market. They explicitly stated that the educational meaning of the content of equal educational opportunity is not yet supplied. The Supreme Court agreed with the trial court that the constitutional demand regarding education is not now met, particularly in view of the discrepancies in dollar input per pupil. They noted that no other viable criteria for measuring compliance with the constitution is currently available.

With some humility I submit that the Supreme Court clearly recognized the difficulties involved in defining "thorough and efficient" and "equal educational opportunity." Although the Supreme Court left to others the definition of thorough and efficient education I believe their affirmation statement clears away any potential interpretation of the trial court opinion as implying that the thorough and efficient statement in combination with the provision for equal protection under the law necessarily establishes an upper limit upon public educational institutional efforts rather than a reasonably adequate justifiable norm. I submit that any implied restriction upon the upper limits of education is constitutionally and legally suspect and is operationally and functionally impossible to enforce or maintain.

Concluding this general review I am convinced that the questions addressed by the Joint Education Committee for response by consultants are the crucial ones to be addressed. Each question must be resolved with extreme thoroughness and care. It is clearly of vital importance to study interrelationships among the various questions addressed, for this will sharpen their meaning and increase the possibility of legislative actualization. I emphasize also that the implementation of any new educational legislation must address itself to reasonable conditions and reality limits in each of the following domains; educational process, political acceptance, legal consistency, and economic feasibility.

Question 2

- a. What did the term "thorough and efficient" mean when it was first introduced into the State Constitution in 1875?

Have changing conditions changed the meaning of the term?

To what extent has the Supreme Court broadened, limited or otherwise changed the meaning of the term by its opinion in Robinson v. Cahill?

Response

In considering this question within the total context of the other questions on "thorough and efficient," particularly questions eight and nine, there seems to be a recognition by the legislative committee that "thorough and efficient education" might not have been the same in 1875 as it is today. I strongly concur with the proposition that education of any definable quantity or quality is not the same now as then.

Even a superficial perusal of the history of education in the United States and New Jersey reveals the societal context in which the term must be interpreted. Emerging within a state identified historically with private education, New Jersey education passed through states of permissive legislation for free public schools, patterns of minimum mandates of curriculum (by 1875), a general evolutionary development of curriculum offerings, compulsory age mandates, and progressive efforts toward support equalization and equal taxing assessments.

"Thorough and efficient" education during the decade of the 1870's and before meant the didactic drilling of children in the basic skills of reading, composition, arithmetic, and spelling, with perhaps some attention to practical and physical arts and activities. The conceptual content of that period included primarily instruction presented for rote assimilation. Concepts of social values and scientific facts presented at that time are today particularly noted for their monadic cultural perspective and generally implied fixity and assumed irrefutability.

Historically recorded perceptions of curriculum during the last half of the last century generally describe either a traditionally classic body of academic and cultural fixed content, a body of social and moral value exhortations and slogans with a strong religious flavor, or a limited amount of nonsystematic practical, vocational, cultural and physical activities. Such public education was clearly intended to transmit a minimum amount of an homogenous culture and a capacity to deal with the culture. Minimal literacy skill was the predominant educational goal. The evolving understanding of educational goals held by a broad spectrum of American society today -- the goals and values of educational opportunity for all, education for critical thinking, inquiry, and self-enrichment, and education as a means of sustaining American democracy through social mobility -- were neither publicly recognized nor widely discussed when the New Jersey Constitution was written.

## Question 2

- b. Have changing conditions changed the meaning of the term ("thorough and efficient education")?

## Response

The establishment of comprehensive curriculum goals for American public education took place primarily following the writing of the New Jersey Constitution. The Committee of Ten in 1893 introduced into the secondary schools the advocacy of scientific, modern language, and practical educational tracks in addition to classical programs. The Committee of Fifteen in 1895 advocated the principle of correlation of elementary school subjects. The Committee on Economy of Time in Education in 1911 made an objective study of the value of academic subjects, their placement, social utility, etc.

Perhaps the best known national curricular perspectives advanced in America were the Seven Cardinal Principles advocated by the Committee on Reorganization of the Secondary Schools in 1918 and the Ten Imperative Needs for Youth advanced by the Educational Policies Commission in 1938. These two taxonomies describing a comprehensive educational curriculum for all children and youth as presented by the Committee on Reorganization and the Educational Policies Commission are substantially complete and adequate as a structure for curriculum design today.

In addition to the content of education as presented in curriculum designs and implemented in instructional processes there are a number of additional changes which have occurred in education that are of equal importance in addressing the matter at hand (change in the meaning of "thorough and efficient education"). Representative theories of learning and their implications for formal education have changed fully as much as the knowledge within the several academic disciplines. Theistic mental discipline theories have changed to apperceptive learning and/or behavioral conditioning with or without reinforcement. Faculty psychologies and classicism have been generally replaced by structuralism and behavioral modification. Perception of the learner as bad-active has generally changed to perception of the learner as neutral-active or neutral-passive.

Learning transfer is no longer regarded as automatic or based on an exercise of mental faculties through drill. Learning transfer is based today in theories and concepts of growing apperceptive masses, general progression from simple to complex, recognition of acquisition of facts as a very primitive step in the development of advanced learning and inquiry capabilities.

Advances in curriculum design and the related understanding of educational and social psychology have significantly changed teaching strategies and methods. Mental exercise and repetitive drill are two among many instructional processes in use today. Today teachers employ a variety of experiences which guide learners through a complex range of cognitive, affective, and psychomotor activities. They design lessons to transmit and/or acquire concepts, understandings, translations, interpretations, applications, analyzing and synthesizing abilities. They seek to guide developmental progress in exercising judgment and in establishing commitments toward increasingly adequate and useful value sets and systems.

In summation of the above remarks on changing conditions of education since 1875 I want to reinforce the dynamics of change that have and are taking place. However, I do not intentionally want to overcomplicate the task confronting the legislative committee. Their task may be to investigate and confirm the existence of a fully adequate state-wide comprehensive curriculum plan and the establishment of educational structures and processes for assuring that all children have access to the benefits of this service.

There seems little doubt of a long overdue need for legislative leadership toward updating public education today in New Jersey, recognizing fully the Constitutional and equal protection mandates. The results of your efforts must be sought with a full awareness of rational and pragmatic limits, however. Neither legal nor legislative statutes nor institutional processes will achieve a millennium containing the ultimate resolution of optimum ends and means. This condition is true of humanly mediated processes in any complex social institution, including the public schools and public legislatures.

A periodic stock taking or review of such an important matter as public education seems a justifiable legislative goal, with or without legal mandate.

## Question 2

- c To what extent has the Supreme Court broadened, limited, or otherwise changed the meaning of the term by its opinion in Robinson v. Cahill?

## Response

It does not appear to me that the trial court and Supreme Court essentially either broadened or limited the meaning of the terms under discussion here. They have extended through legal opinion certain crucial meanings and conditions of thorough and efficient education, however. Definitional or descriptive extension usually changes meanings by setting clearer limits rather than necessarily broadening or limiting. The decisions involved here clearly extend meanings beyond the undefined constitutional terms of thorough and efficient education by defining these terms. They also extend meanings by establishing the necessary condition of equal protection of both receivers of free public educational services and taxpayers (or classes thereof) under the law. The Supreme Court affirmation also states that "education in the contemporary setting should equip a child for his role as a citizen and as a competitor in the labor market." This seems to affirm in judicial ruling certain educational standards that are rather commonly established in legislative educational statutes. These latter conditions do not appear to add to existing curriculum goals and I doubt that is their intent. Nor do I believe the Supreme Court presented these conditions to function as limits upon public educational activities for they clearly state that the meaning of the terms "equal educational opportunity" have not yet been supplied. They also state that "no other viable criteria (except dollar input) for measuring compliance with the constitution" is presently available.

I repeat at this time an earlier statement that I believe the Supreme Court affirmation has established several clear conditions for structuring future public tax-supported education in New Jersey that must be addressed by the legislature. I re-emphasize my earlier statement that we must develop a new definition and description of "thorough and efficient education" dispensed according to criteria of equal protection (also to be defined and described). In addition there seems to be a court mandate to implement these definitions in practice and to continually assess and evaluate both the prescribed goals and means on the basis of a system of reasonably rational and objective procedures. I would guess that, given present societal conditions, all of the definitions of means and ends will be further probed in both the near and distant future through the exercise of a continuing public interest by organized political and legal advocates with diverse and opposing interests and opinions. I personally prefer that the executive and legislative in government rather than the judicial serve as the primary agents of orderly progress and change in education and most other governmental services, for they are probably better organized to sense present and emerging social needs and interests of all of the people, and the most pressing goals confronting the state government. They are also more fully aware of the resources available and the problems associated with establishing priorities for allocating these resources.

Question 7

- e. The Supreme Court also said "...we do not doubt that an equal educational opportunity for children was precisely in mind (of the writers of the Constitution)."

What is meant by "an equal educational opportunity"?

Response

Critical in the thorough and efficient educational issue under deliberation by the Joint Committee is the matter of an "equal educational opportunity." A precise meaning of each word is needed here. The meaning of the word phrase is also needed. The problem of implementing the Court's mandate is pretty much the operationalization of this statement within the context of the other requirements included in the Court's opinion.

Lexical definitions of the term "equal" offer these synonyms:

1. of the same quality, size, number, degree, intensity
2. having the same rights

A related term "equivalent" is defined as:

1. equal in quantity, value, force, meaning.

The term "identical" is defined as meaning:

1. the very same
2. exactly alike or equal.

I submit that the term "equal" here means equivalent and not identical. The latter application of meaning is educationally and pragmatically unacceptable and operationally unworkable.

A working definition of the term "education" might be:

education is the guidance of learning activities in the (reasonably) successful accomplishment of all of the educational means and end goals established within a prescribed curriculum, its structural design and implementation.

Among the curriculum goals to be included in any proposed curriculum for New Jersey children is an essential set of goals related to one explicated by the New Jersey Supreme Court - equipping the child for his role as a citizen

and as a competitor in the labor market. Social and vocational competency have long been accepted goals in American Education. Obviously, some reasonable degree of social-economic equivalence of learning opportunity is called for in New Jersey.

The term "opportunity" is of great importance in the phrase under discussion. Lexical definitions of "opportunity" include:

1. a combination of circumstances favorable for the purpose
2. a fit time, good chance or occasion

This term implies favorable rather than barely minimal circumstances. It also implies that conditions of probability rather than guaranteed assurance prevail. It notes also that there is the matter of appropriateness of time (age, situational conditions).

The term "opportunity" seems to mean in the above phrase the clear assurance of provision for reasonably favorable learning circumstance and guiding instruction for all children and youth of a predetermined class who avail themselves of this service, with a contingent effort to evaluate the probabilities that such circumstances in fact prevail. An additional condition is, of course, a curriculum structure and process providing for all of the input resources necessary to assure its reasonable implementation.

The history of education in America and in New Jersey generally indicates that curriculum content involving the guidance of learning in the acquisition of relatively well defined concepts, facts and skills is the predominant process in past and present public education. Rather ready concensus can be achieved in New Jersey in this educational area. Such a structure pretty well exists today, although by no means should it be assumed that this structure is not dynamic and changing and that it functions fully and equitably throughout the public schools of the state.

Government service, including education can also readily achieve definitive social benefits in physical health care, nutrition, prevention of illness and the development and maintenance of psychomotor skills and normative conditions.

In the matter of genetic and environmental differences imposing rather irreversible conditions of mental and physical health and educational and vocational performance potential upon individual human beings, education can support, enhance, and ameliorate only to a limited degree. The degree is important. Yet, irreversible differences may remain. The resolution of this continuing educational effort lies, of course, in establishing a means for differentiation of educational offerings among classes of individuals and particular individuals, meeting in all cases predetermined criteria which include conditions of humaneness, social concern, substantial but reasonable effort, equal protection and equivalent opportunity under the law. It is of prime importance that individuals or classes of individuals as defined by differences of race, color, sex, ethnic identity, language, subclasses of functional ability, or by political, social, religious and economic value differences are not discriminated against intentionally or persistently.

The history of public education indicates also that public schools have not been remarkably successful in the affective education domain. This domain includes the guidance of learning in developing the motivational characteristics of awareness, guided productive attention, achieving willingness and satisfaction in response, acquiring attitudes and values, comprehensive and productive sets of attitudes and values, and positive and persisting patterns of character and social judgment.

I want to present here a firm opinion that much of the failure of the public schools in the minds of many classes of critics resides in the area of affective education. However, by no means is this the primary fault of educators, although educators are not beyond some criticism. Thorough and efficient affective education is the most complex task that New Jersey public schools could undertake.

American educational history clearly indicates a progression of motivational and value education from narrow and homogenous religious and work ethic dominance to a socially imposed pattern of defensive secular, scientific, and pragmatic process. This secular progression has been more political and irrational than goal-oriented, systematic, and efficient.

The present public educational milieu is characterized by emerging concerns for a new sense of community in our motivational and value pursuits. Emerging affective educational goals will essentially recognize certain continuing normative characteristics of American society and certain emerging value sets characterized by greater social variation, multicultural interest, and increased concern for equivalent opportunity and social protection under the law. Educated persons in all areas of social endeavor address these matters daily in their lives. Attempted synthesis of emerging affective goals into public school and college curricula is of course frequently misunderstood and therefore resisted by narrow secularists and dogmatists of all dispositions.

In general we can and undoubtedly should expect that the important social institutions of government, religion, political and social advocacy, and the home will and should share in the determination of value education and affective education in the public schools. They should also be held accountable for the educational results, however, to the degree that they dominate the making of decisions regarding determining the workability of educational means and ends. I submit that it is this extensive affective educational domain, which incidentally overlies all cognitive and psychomotor education, that justifies the widest representation of citizens in the determination of educational curricula and goals. Periodic review of educational philosophy and supporting sociological and psychological means and ends must essentially be built into any public education system if it is to maintain a satisfactory degree of thoroughness and efficiency.

In a summation of my response to the question of equal educational opportunity I reiterate that the Joint Education Committee should be able to resolve questions of cognitive and psychomotor education with relative ease. These questions will respond rather readily to rational human processes. Matters of genetic and environmental limitations and physical and emotional illnesses are relatively irreversible and require other professions than education for their fullest resolution. The most complex set of problems facing public education today lies in the area of human values and motivation. This problem resolution requires widespread cooperation among all social institutions in addition to the public schools. An irreversible and unchanging resolution of affective educational goals into a nice neat accountability package will come with the millennium. The best we can do at any period in time and space is to define through community participation an acceptable (pragmatic yet comprehensive) set of motivational and value goals to be taught. I believe you will agree with me that any mandated goals you may establish here should be generally acceptable and relatively finite rather than totally idealistic and exhaustive. A responsible legislature cannot entirely bypass this issue, however. There is much in school code related to curriculum content, student behavioral standards, freedom of information, etc. that reflects affective education in process.

### Question 8

Does the word "thorough" apply to the extensiveness of the school experience made available or to the intensity of effort in particular areas of study?

### Response

The choice of the word "thorough" in respect to education for use in the New Jersey Constitution reflects historical educational change more than perhaps any other term under discussion. The current lexical definition of "thorough" means:

2. proceeding through to the end, complete, finished
4. very exact, accurate, painstaking

I believe the term meant approximately the same a hundred years ago.

This definition definitely implies intensity of effort. Within the context of educational goals of the eighties and the primitive state of educational psychology and learning theory prevailing at that time, the term applied to a very limited set of cognitive goals and functional skills. It also reflected outdated perceptions of human nature and educational psychology. Education at that time did not effectively deal with the nature of self-initiated activity in learning, patterns of learning development and perception, current theories of sustained motivation, methods of achieving retention and learning transfer.

Today I doubt that many informed educators would see much value in defining "thorough" in the sense of intensity of effort. Almost all academic disciplines affecting education are teaching empirically tested theories that are sharply divergent from this position.

The very essence of education today reflects the continued presentation of the concepts and theories of almost all traditional disciplines and many additional ones. Numerous basic modes of inquiry are taught. Scientific and systematic inquiry has replaced more primitive methods of historical induction and non-empirical logic (circular reasoning). We realize today that there is a great difference between teaching the meaning of a term, for example, cooperation, generating only an immediate or easily forgotten rote response, and teaching a commitment to voluntarily living the term in appropriate future situations. Nor are the social sciences and social value terms much different from other disciplines in their degree of change. They are cited as obvious examples of the extent of change in educational goals and processes since 1875.

Readers of educational literature see frequent comments and data respecting the rate of knowledge increase, change and obsolescence. Vocational literature abounds with information concerning the increasing complexity of the world of work and related professional disciplinary training. More than twenty years ago leading curriculum experts, (for example Hilda Taba, perhaps the best known) realized at efforts to "cover" fixed bodies of knowledge and information in public

schools was a futile and non-productive pattern for organizing curriculum and instruction. Careful selection of the most persisting and important basic concepts and the most representative of learning experiences replaced in better schools traditional coverage of textbooks and unsystematic instructional activities. Quality of education as well as quantity became a concern of better educational leaders.

I must admit here that although this has been the generally accepted curriculum structure for twenty or thirty years the persistence of many factors sustaining the employment of too many marginally competent and marginally educated teachers has resulted in the continuation of ineffective and outmoded educational practices even today. Thus we have obvious differences in educational quality and effectiveness.

Educational product and process goals are affected by specific curriculum structures, by school district program emphasis, by administrator interests, by teacher interests and emphasis, by supporting instructional materials, by the entire range of environmental factors affecting the learner at any one point in his formal learning career. By no means can one overlook the attitudes and experiences that are continually exposed and imposed upon the child by his family, his peers and other social institutions and situations with which he has frequent and persisting contact. All this is the total "life school" of the child. It will always be thus.

Let us, therefore, think about educational accountability, thorough and efficient education, and equal educational opportunity in a reasonable and pragmatic manner. We must seek neither easy solutions to complex problems nor solutions which over-complicate by establishing ill-defined, confused and impossible educational goals and means.

In summary, I advance here an opinion that "thorough" education today must be highly selective of goals and processes within a comprehensive and increasingly accumulative curriculum and learning structure. The emphasis of this decade and the next is said to be in the direction of interdisciplinary and generalizable skill development. Specialization is and will continue to be necessary in complex modern learning, but so will be the ability to see new relationships and to generalize. Inquiry experiences will continue to replace redundant and nonproductive drill in many learning situations. Adequate education today must be extensive. It cannot be functionally intensive without being comprehensive and transferrable.

Question 9

Does the word "efficient" apply to all activities of all public schools in the state, or might its application be limited to only the State-funded portion of a public school activity?

What are the advantages and disadvantages of each approach?

Response

Lexical definition of the word "efficient" defines it as:

1. ability to produce the desired effect with a minimum of effort, expense or waste
2. the ratio of effective work to the energy expended in producing it

I submit that "efficient education must recognize two distinct operational conditions -

1. the achieving of clearly predefined and obtainable goals and
2. achieving these finite goals in such a way that the learner will be disposed to appropriately recall and apply his new learning, and will further seek to advance beyond this level of relatively simple and finite accomplishments.

Within the above definitional context and recognizing its relationship to my prior definition of "thorough" as extensive rather than intensive, I further submit that providing children and youth with equivalent educational opportunities for thorough and efficient education require in essence the establishment of a comprehensive set of generic educational goals. These goals must developmentally accumulate through either a predetermined period of time or to a measured degree of proficiency (or some combination thereof). We should not ignore the fact that pragmatic time dimensions in fact have functioned much more commonly than performance dimensions as measures for dispensing and evaluating educational services.

In substance I am supporting a position wherein a comprehensive learning opportunity must be offered any child in any school in the state. This curriculum can and should be generically definitive and finite, however. It cannot offer all things to all people. It can and must establish a set of educational priorities and leave undefined and excluded other individual and social interests. This is the evolving task of advancing curriculum design as evidenced in American educational history.

It seems that within a comprehensive curriculum structure there must be room for considerable differentiation. Differentiation must and will be exercised by local school boards, local administrators and teachers, individual children and parents. Attempts to completely close public school operation to differentiation are

inimical to American educational precedents - they are operationally stupid and functionally impossible.

As I have written in other sections above I believe that any mandated institutional service is fundamentally minimal or normative - this may be interpreted to mean definitively adequate. It cannot mean exhaustive. I submit that the educational issue at hand must be resolved by mandated provision for a definitive educational curriculum and provision for necessary supporting resources and processed, all of which will be subjected to a substantial evaluative effort. I am yet to be convinced that local initiative over or beyond a functional curriculum base can or should be prohibited.

It, therefore, appears to me that the issue of whose funds support the program is not the fundamental legal or legislative question to be addressed here. As I interpret the meaning of the court opinions the state may carry out its obligations by either state or local funding. The court mandates for thorough and efficient education and equal protection must be met, but both courts clearly hesitated to mandate the procedural details to be employed.

The judicial position seems to be that educational opportunities must be justifiably adequate for all before discretionary local tax initiative can be tolerated. If discretionary enrichment beyond the norm is prohibited such resource support and educational activity will in all probability move outside the public schools into other branches of government or to other social institutions - business, philanthropic, voluntary, etc.

For those who wish to establish minimum performance standards as the single basis of "efficient" education I suggest they think twice. Equivalent educational opportunity might well mean free public college and graduate school for some students as personally and socially justified equivalents to completion of grade eight for others (and institutional care for still others). The utility of defining classes of citizens to be educated by the traditional means of age and/or time limits is not all bad. However, we should realize that time and age limits which are at best arbitrary and utilitarian devices should be employed so as to achieve optimum results for all parties concerned (both individuals and society). Some degree of flexibility in applying age and time limits for free public education probably should be encouraged, perhaps even mandated. For example, early entrance into nursery school for deaf or mentally handicapped children is generally believed to be highly necessary and desirable.

You have asked that I respond to a question concerning the advantages of applying an "efficiency" requirement to all public school activities or just to state funded activities. I am replying herein that in both an educational and an operational sense standards of efficiency should apply to all tax funded institutional operations.

The issue here might better be stated:

"should curriculum goals and derivative efficiency measures (educational performance evaluation, perhaps) be applied to just the state defined curriculum, or to other activities and experiences justified on a discretionary basis"?

My answer here is that I believe it would be better to limit initial centralized evaluative efforts, concentrating on evaluating a newly defined thorough and efficient educational base only. That is enough of a challenge. In fact, I urge this committee to recognize that educational evaluation and research can be extremely expensive and time-consuming. It may easily consume more resources than it will return in a cost-benefit sense.

Although, as I have previously stated, I do not believe we can productively differentiate between state and locally funded programs in respect to educational efficiency within the legal mandate under review, my reasoning would be the same if such were legally and operationally possible. If such were the case, I would apply the initial legislative, statutory and educational efforts to the most limited set of programs under review - in this case the state funded program. This position is justified almost wholly on a concern for feasibility reasons and in an effort to avoid unproductive bureaucratization.

A danger in continuously limiting educational evaluation to a particular portion of a total program is this. People tend to direct their efforts resources only to operations that are socially evaluated (judged worthy of evaluation). Thus continuously limited application of systematic educational evaluation within the thorough and efficient concept will tend to restrict, stabilize and retrench educational priorities and opportunities. Do not doubt this fact. It is for this reason that I repeat my plea for a broad and comprehensive generic curriculum design as the basis for any sustaining "thorough and efficient" program definition. Even in a relatively narrow economic and vocational sense establishing a limited (intensive) meaning for "thorough and efficient education" will prove to be a political and economic tragedy. Such a position is advocated only by the short-sighted and uninformed. It is a sort of economic and political "book-burners" attitude and will tend to affect society in the same regressive way.

In summary, I repeat the last sentence I employed in my general introductory statement. I emphasize that the implementation of any new educational legislation must address itself to reasonable conditions and reality limits in each of the following domains: educational process, political acceptance, legal consistency, and economic feasibility.

JOINT EDUCATION COMMITTEE

Staff Note #17

Re: Effross, "Thorough and Efficient" -- Its Meaning in 1875 - Question 2

In this paper the author quotes extensively from contemporary sources to make the following points:

1. The term "thorough and efficient" was used in other states long before New Jersey adopted it in 1875.
2. The original language recommended was limited to elementary education, but at the insistence of North Jersey State Senators it was broadened to permit the development of public high schools.
3. "Thorough and efficient" was a well-recognized term in educational circles nationally before it was adopted in New Jersey.
4. The context in which "thorough and efficient" was regarded in New Jersey in 1875 was in connection with greater State control of educational administration.

"Thorough and Efficient" --

Its Meaning in 1875

by

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May 6, 1974

"Thorough and efficient", terminology previously used for constitutional and educational purposes elsewhere, was not even the phrasing suggested by the New Jersey Constitutional Commission of 1873. But the context in which the words were used can provide clues to their meaning in 1875, when they were inserted into the State Constitution as a description of the system of free schools that was to be guaranteed (see Appendices I and II). Apparently, the prevailing belief was that by insuring centralized authority for the State (over and above local supervision of education), all pupils could benefit from the resulting compulsory regulations and uniform standards set by the State.

1. The term "thorough and efficient" as applied in a State Constitution to a State system of education pre-dates New Jersey's 1875 amendment by almost a quarter-century. Ohio's second Constitution (1851), Article VI, Sec. 2 reads:

The General Assembly shall make such provisions, by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state, but no religious or other sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of this state.<sup>1</sup>

2. The clause, "provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years," was not the wording proposed by the Constitutional Commission in 1873. The revised text was offered in an amendment by Senator John W. Taylor (R-Essex) and agreed to by a 15-1 vote.<sup>2</sup> No discussion of the vote appeared in leading contemporary newspapers.<sup>3</sup>

In the paragraph that the Commission had presented for the Legislature's consideration, secondary school education was specifically excluded from State supervision:

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall establish and maintain public schools for the gratuitous instruction of all persons in this state, between the ages of five and eighteen years. The term "free schools" used in this constitution, shall be construed to mean schools that aim to give all a rudimentary education, and not to include schools designed to fit or prepare pupils to enter college, or schools controlled by or under the influence of any creed, religious society or denomination whatever.<sup>4</sup>

Senators from northern New Jersey, in support of the high schools, persuaded their colleagues to delete the restriction, and by a 12-4 vote the upper chamber agreed to the following text before Taylor's amendment.

The Legislature shall provide by general laws the means to establish and maintain public schools for the gratuitous instruction of all persons in this state between the ages of five and eighteen years.<sup>5</sup>

3. That "thorough" and "efficient" had been used nationally before 1875 to describe both educational method (state administrative control) and content (curriculum) is plain from this excerpt from Frederick Adolphus Packard, The Daily Public School in the United States, Philadelphia, J. B. Lippincott and Co., 1866:

There is a plain meaning to the phrase used in one or more of our school laws, "thoroughly instructed" italics added; and it has no ambiguity when used concerning other things. Everybody understands what "thoroughly instructed" italics added means, when applied to a shoemaker, a wheelwright, or an engineer. It is tantamount to saying he is a master of his business. Why

should we not understand the same phrase in the same way when applied to law to the act of reading and writing? [p. 17]

...In such an inquiry as we now propose to make, there meets us at the threshold the difficulty of establishing any standard by which the proficiency of a child or a school in good learning shall be determined. Each of the several States being left to adopt its own scheme, and to determine what shall be the method and measure of education, imparted at public expense, to all classes of children and youth within its bounds, it is quite impossible to secure that uniformity of method, or thoroughness [italics added] of administration, or strictness of responsibility which a well-managed national bureau might achieve. The whole work is fragmentary and unmethodical. Each State must have a different standard, grade or measure of school culture.... [p. 19]

...It is admitted that in this sketch we content ourselves with a very humble grade of education. But we make up in thoroughness what we sacrifice in extent. We make the most of a garden-spot, instead of half cultivating twenty acres. We insist upon having good readers, spellers and writers, though we wait awhile for chemists, astronomers and engineers. We will go all reasonable lengths with the advocates of an enlarged system of popular education, when "thorough instruction" [italics added] is secured in the plain branches assigned to the daily public school.

As a weighty argument in favor of such "thorough instruction" [italics added] in these elementary branches, it should be remembered that the utility and efficiency [italics added] of other educational agencies depend very much on the faithfulness of this primary teaching.... [p. 20]

...To accomplish the legitimate purpose of a daily public school then, as we regard it, three things are obviously important.

1. A right popular appreciation of the work....
2. Supposing the people to be in sympathy with the school, we want an enlightened liberal legislation, providing certain and sufficient means for the erection of suitable structures, appropriate in their form, size, situation and appurtenances to the uses for which they are designed; and the means for the adequate compensation of well qualified teachers.... [pp. 21-22].

3. There should be such a system of control and superintendence by competent men as shall not only insure thorough [italics added], systematic and uniform instruction in the required branches, but shall also enforce regularity of attendance during the required school term.... [p. 23]

4. In the climate of the times, the description "thorough and efficient" appears to have been used more in connection with a proposed greater State control of educational administration.

The demand for compulsory school attendance in New Jersey, as noted in 1871 by Ellis Apgar, State Superintendent of Public Instruction was a prime example:

It must be apparent to all who have given any attention to the systems of popular primary education adopted by different states and countries that free instruction provided, and enforced by the same power that provides is the most successful in making education universal and thorough [italics added]. This, then, we hold: that New Jersey needs, and will have, in the future — and that not a distant one — the power to compel every child within her borders to be in regular attendance upon some school during certain portions of the year, while within the limit of a given age. Most States of New England practice this system and there is no part of this country that can boast so thorough [italics added] and general an education as New England. Prussia has the best educated people in the world, and that because she rigidly enforces this law of her land, that every child must go to school. New Jersey has done well.<sup>6</sup>

Not until 1874, when the first of two successive Legislatures was considering the passage of the group of constitutional amendments were children (8 to 13 years old) required by the State to attend school at all (12 weeks in each year, with six of them consecutive) or to be instructed at home at least 12 weeks in each year. Even then, the \$20 penalty for every neglect was not to be imposed if the parent or guardian was "unable, by reason of extreme poverty to comply with the requirements of this act".<sup>7</sup> The measure had been opposed by the New Brunswick Times

(February 6, 1874) as being based on a "pharassical /sic/ assumption" and condemned by the Newark Morning Register (March 21, 1874) as "wrong in principle" and as a "futility". In an editorial of the Trenton Daily True American (as quoted in the Trenton Daily State Gazette, March 7, 1874), the economic reasons for such resistance was acknowledged:

If such a measure should ever become law the State will have to see to it that ample accommodation is furnished in every school district for the children. It will not do to make it compulsory to send children to school and fail to provide school room and teachers for all who may apply. The experiment will not only incur great cost, but it will be an exercise by the Legislature of a power which partakes largely of arbitrary government.

Such financial considerations were recognized again the following year (1875), when the Legislature provided that the attendance law (now applied to children 8 to 11 years old) should "not be operative in those school districts where there are not sufficient accommodations to seat  
8  
the children...."

FOOTNOTES

1

Isaac Franklin Patterson (comp.), The Constitutions of Ohio Amendments, and Proposed Amendments (Cleveland, Ohio: The Arthur H. Clark Co., 1912), pp. 135-136.

2

New Jersey Senate Journal, 98th Sess., February 24, 1874, pp. 454-455.

3

The author examined the Newark Daily Advertiser, New Brunswick Daily Times, (Jersey City) Evening Journal, and the (Trenton) Daily State Gazette.

4

New Jersey Senate Journal, 98th Sess., January 13, 1874, p. 52.

5

Ibid., February 4, 1874, pp. 177-179. See also Robert D. Bole, The Development of Financial Support for Public Schools in New Jersey (Ed.D. dissertation, New York University, 1957), pp. 168-170.

6

E. A. Apgar, "Free Schools at Last", Beecher's Magazine, III (May, 1871), 232.

7

L. 1874, c. 523, p. 135.

8

L. 1875, c. 443, pp. 105-106.

## APPENDIX I

The following selection of quotations, chronologically arranged, indicates admiration for the thorough and efficient, centralized type of free public school system then operating in Holland, Germany, and New England.

The defects of our common schools under the old system came under two heads -- irregular attendance of the children, and incompetency of the teachers. The first of these is, as we have seen, untouched by the new law. For the rectification of the latter, the provisions are numerous. The Normal School was already in operation, and its efficiency *[italics added]* is acknowledged. The powers and duties of teachers, long the subject of uncertainty and vagueness, are now specifically defined. The examination of teachers, the provisions for which occupy very considerable space, is not rendered more certain or thorough *[italics added]* than the old law required, and may be shoved over with quite as much facility as formerly....

A. S. Meyrick, "The New School Law", Northern Monthly Magazine, I (October, 1867), 591.

These two bodies, then -- the Trustees of the School Fund and the Trustees of the Normal School -- together with the Treasurer of the Normal School, constitute, ex officio, the State Board of Education. To these seventeen men are committed large powers of general supervision and administration, beside several most important specific powers. They have the appointment of the State Superintendent and of the twenty-one County Superintendents, and they can at any dismiss these officers for cause. This gives a living efficient *[italics added]* power which is felt in every schoolhouse in the State....

J. S. Harte "Common Schools in New Jersey", Lippincott's Magazine I (April, 1868), 415.

At the request of the Senate, Dr. McCosh, with President Campbell of Rutgers and Professor Gilman, of Yale, addresses the Legislature and friends of education from the Assembly Chamber of the State House upon the subject of a more thorough *[italics added]* elementary system of schools and the establishment of a higher grade of free schools for the State....

...Prussia has a common school system of a high order. It is compulsory; every child is obligated to be educated and the people are taxed to pay for it. No one complained of it, but were fully satisfied that it was the true system.

Dr. McCosh gave an interesting account of his visit to the higher schools of Germany, and said that the system of education was thorough *[italics added]*, quite as high as that given in the freshman and sophomore classes of the colleges of this country. You find a dozen of these schools in these cities, with professors all highly educated. After a thorough *[italics added]* inspection of these schools, he was prepared to say that it was the most beautiful feature of the country....

"Dr. McCosh on Free High Schools" Beecher's Magazine III (April, 1871), 180-181.

An inspection intermediate between that of the State and County Superintendents seems to be the great want of our present system. The Commission are of the opinion, that outside of our larger cities there is no adequate inspection of the schools. There is needed a far closer supervision of them, a constant watching of their practical working, and the immediate reporting for correction of whatever is faulty. Hon. Edward Danforth, Deputy State Superintendent of Public Instruction of New York says: "The superiority of public elementary instruction in Holland to that of any other European State, according to the unanimous testimony of her own distinguished educators, and those of other countries, is entirely attributed to a system of inspection which, for completeness and thoroughness *[italics added]* is probably unequalled in any other country on the globe. W. E. Hickson, an English critic, remarks: 'The Dutch-school-masters are decidedly superior to the Prussian, and the schools of primary instruction, consequently, in a more efficient *[italics added]* state. This superiority we attribute entirely to a better system of inspection. In Holland, inspection is the basis upon which the whole fabric of popular instruction rests.'"

Report of the Commission on Education to the New Jersey Legislature January 30, 1872, Document No. 25, in Documents of the Eighty Sixth Legislature of the State of New Jersey, 1872, p. 4.

After having utilized the existing school law in various parts by changes like these, and without doing any violence to its organic structure, the Commission [on Education] then considered these broader questions.

1. What does our School System lack in order to make it equal to the system of any other State or country?

2. What do all the systems in the United States most lack?...

These grave questions were deliberated upon with the earnestness their importance merited. Information was sought for and obtained from the most enlightened, the most experienced, the most successful and the most practical educationists in this country and elsewhere; and after a calm and dispassionate-consideration the following results were arrived at:

1. That in order to make our School System equal to the best systems of other States we needed an improvement in the law relative to the Normal School; a provision for the education of children employed in manufacturing or mechanical establishments, a provision for the education of children who are habitual truants, and who, by reason of the neglect, crime, drunkenness, or other vices of their parents, or from orphanage, are growing up in ignorance and vice; a provision for evening or other schools for the education of persons over fifteen years of age; a provision for the establishment of high schools; and provisions prescribing what studies must be pursued in schools of every grade. Provisions, amply-meeting all these necessities have been engrafted upon the plan submitted by the Educational Commission; and, so far as we have been able to learn these all meet with general approval, and hence do not require any defence at our hands....

2. That what all the school systems in this country -- the system of every other State as well as of our own -- most lack is a dispassionate,

## APPENDIX II

After passage of the education amendment, Governor Joseph D. Bedle expressed these ideas on the financial aspects of a "thorough and efficient" system of free public schools:

This amendment is fertile in questions which the Legislature will be obliged to settle, in order to appropriately legislate. I will refer only to one more of its provisions. No local or special law can be passed "Providing for the management and support of free public schools." By the amendment to Paragraph 6 of Section 7, Article 4, "the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years." This is a most important constitutional guaranty of free schools, but how is it, in connection with the clause in paragraph eleven, to be carried out? The question is not free from difficulty, but my own judgment is, that the words "thorough and efficient system" do not necessarily require free schools to be maintained exclusively through the State Treasury, by State tax alone. The duty is upon the Legislature to provide such a system, but it may be in whole by State taxation, or in part by that means, and the rest by local taxation, and, so far as by the latter, the same must be authorized only by general laws. There must necessarily be local taxation for the erection and repair of school houses, and there is such a difference in the cost of supporting the schools throughout the State, depending upon the tastes, habits and demands of the various localities, that no equal distribution of a State fund would afford free schools to all. To illustrate: A little over one-half of the schools of the State are now exclusively supported and kept open out of their share of the State funds, while the remainder are sustained by additional moneys raised by the local authorities. To reach this difficulty, there should be a system comprehending local taxation, as well as State, when necessary to secure free schools. Local taxation, by general law, is very different from local or special law authorizing it. The existing school law may not need much alteration to make it conformable to the amendments. The various local school acts now in force ought not to be hastily disturbed before a thorough system is devised, entirely practical in its operations, in the different localities. These observations are subject to what hereinafter follows in reference to the amendment on taxation, and as the same may be thereby qualified.

First Annual Message, Joseph D. Bedle to the Legislature, Document No. 1, Documents of the One Hundred Legislature of the State of New Jersey, 1876, pp. 9-10.

JOINT EDUCATION COMMITTEE

Staff Note #27

Re: Tractenberg, Some Aspects of "Thorough and Efficient" -- Questions 1 - 2 - 8 - 9

The author discusses a number of alternatives as to who should define "thorough and efficient" -- the Legislature, Governor, State Board of Education and State Commissioner, the county superintendents, or the local school districts. He believes that the Governor and county superintendents are not appropriate instruments for this purpose. He likewise feels that there are serious drawbacks to the roughly 600 local school districts assuming responsibility for this task, for this would be unlikely to promote state-wide equality of educational opportunity, and it would probably lead to many different definitions of "thorough and efficient". Instead, he recommends that the Legislature should enact a general statute providing the broad outlines of the definition of "thorough and efficient", including a statement of essential objectives, standards, and programs. The statute would also require the State Board of Education, acting on the advice of the Commissioner, to develop a more detailed definition of T and E in conformance with the legislative guidelines. Moreover, the Legislature should specifically prescribe the power and duty of the State to monitor the educational process and to ensure that appropriate corrective action is taken in the event of persistent deficiencies.

With regard to the meaning of the terms "thorough" and "efficient", the author maintains that the essence of the word "efficient" is an ability to choose and use the most effective and least wasteful means of doing a task or accomplishing a given end or purpose. Noting that in 1875 responsible legislators consciously rejected the word "rudimentary" and inserted in its place the phrase "thorough and efficient", the author contends that this latter term cannot be construed to mean the least possible, a minimal, or even a basic education, and that it must be as complete as possible.

The author also feels that a "thorough" education must embody both a certain extensiveness and intensity of effort, and that the word "efficient" must apply to all activities of all public schools in the state.

SOME ASPECTS OF "THOROUGH AND EFFICIENT":

A Paper for the Joint Education Committee of the  
New Jersey Legislature Dealing with Research Questions

1, 2, 8 and 9

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Some Aspects of "Thorough and Efficient"

The New Jersey Constitution provides at Art. VIII, Sec. IV, Para. 1 that:

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

In Robinson v. Cahill, 62 N.J. 473 (1973), supp'l op., 63 N.J. 196 (1973), the New Jersey Supreme Court ruled that the State's school finance laws were unconstitutional under that provision because they failed to assure all students a "thorough and efficient" educational system. A threshold problem the Court found was that the State had never specified what "thorough and efficient" meant. That deficiency must be remedied before a constitutionally sufficient new plan for funding-education can be created. In the words of the Supreme Court, "the State must define in some discernible way the educational obligation." 62 N.J. at 519.

This paper will address four broad sets of questions relating to the definition of "thorough and efficient": (1) Who should define the term "thorough and efficient system of free public schools" (i.e., the Legislature, the Governor, the State Board of Education, the Commissioner of Education, local boards of education, some combination of the above), and what are the ad-

vantages and disadvantages of each? [Research Question #1]; (2) What did the term "thorough and efficient" mean when it was first introduced into the State Constitution in 1875, have changing conditions changed the meaning of the term, to what extent has the Supreme Court broadened, limited, or otherwise changed the meaning of the term by its opinion in Robinson v. Cahill?

[Research Question #2]; (3) Does the word "thorough" apply to the extensiveness of the school experience made available or to the intensity of effort in particular areas of study, and what are the advantages and disadvantages of each approach? [Research Question #8]; (4) Does the word "efficient" apply to all activities of all public schools in the State, or might its application be limited to only the State-funded portion of a public school activity, and what are the advantages and disadvantages of each approach? [Research Question #9].

1. Who should define "thorough and efficient". The New Jersey courts have made clear over the years that education is a State function and responsibility. This view was explicitly reaffirmed by the Supreme Court in Robinson v. Cahill when it said, "The obligation [is] the State's to maintain and support a thorough and efficient system of free public schools." 62 N.J. at 509. As indicated above, the Court also announced the obligation of the "State" to define "thorough and efficient". Throughout its opinion the Court refers to the responsibility of

the "State" without ever specifying which agency or officer might have particular responsibilities.\*

We are thus forced back on general principles of law, and public policy concerns, for more specific guidance. The Constitution itself speaks of the responsibility of the Legislature to "provide for the maintenance and support of a thorough and efficient system of free public schools". This suggests that the Legislature has ultimate responsibility for the discharge of the constitutional mandate, including the definition of "thorough and efficient". There is no reason to believe that the Legislature lacks the power to carry out the definitional aspect of the mandate in a detailed and comprehensive manner. It need not rely on any other governmental entity.

There are some advantages to having the Legislature act with specificity in this area. A clear legislative mandate should leave local school districts in no doubt as to their obligations. This may be preferable to the kind of push-pull that has often taken place when the state education department has sought, by exercise of its discretion, to require local action.

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\*Judge Botter, the trial court judge in Robinson, was slightly more specific about the allocation of responsibility. He said:

Education must be raised to a "thorough" level in all districts when deficiencies exist. The Legislature, the State Board, the Bateman Committee, educators in this State have defined this goal in commendable terms.... The State Board and the Commissioner have ample statutory power to measure progress and to enforce this mandate by rule and regulations. 118 N.J. Super. 223, 281 (1972).

Indeed, some critics of the current system of educational administration have maintained that the department tends to be overly responsive to local wishes and, as a result, has played a timid, lowest-common-denominator role. The present reform effort is, after all, partly a response to the State Board's and State Commissioner's failure to use their existing authority to define and implement a "thorough and efficient system of free public schools".

There are also several disadvantages to a detailed legislative definition, however. First, the Legislature is unlikely to have readily available to it the educational and administrative expertise to develop a definition of a "thorough and efficient system of free public schools" which would provide sufficient guidance to state, county and local agencies about how they must function to meet the constitutional requirement.

Second, a comprehensive statutory definition would seriously limit flexibility in an area where flexibility is crucial. The difficulty and complexity of defining "thorough and efficient" is well-recognized. It is highly unlikely that the State's first effort to do so after almost a hundred years of operating under the constitutional provision will be completely satisfactory. Moreover, the New Jersey Supreme Court made clear that "thorough and efficient" must be seen as an evolving concept, changing with the times and with the needs of the larger society. For those reasons, periodic adjustments of the definition are essential,

and the Legislature is not well-adapted for such a continuing role.

Third, it is inevitable that legislative deliberations will be influenced by political considerations. The more detailed the statutory definition of "thorough and efficient," the more troublesome that practical fact of life is likely to be, and the more questions are likely to be raised about the consistency of the definition with the Court's decision in Robinson v. Cahill. Illustratively, the Court criticized the Bateman Act in the following terms: "It must be evident that our present scheme is a patchy product reflecting provincial contests rather than a plan sensitive only to the constitutional mandate." 62 N.J. at 519-20.

That the Legislature has ultimate constitutional responsibility for the definition and that it has the power to develop a detailed definition itself does not mean that the Legislature has no alternatives. The Legislature can delegate some of its responsibility to appropriate public bodies or officers\* under sufficient legislative guidelines. One legal point must be emphasized, however. Under the law of delegation of authority, the delegor (the party delegating authority) remains ultimately

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\*It is impermissible generally to delegate governmental functions to a private agency or individual. However, it is permissible, and highly desirable, to utilize interested members of the public, parents, students, teachers and administrators in an advisory capacity.

responsible for the manner in which the delegee (the party delegated authority) exercises the authority in question. An unsatisfactory definition of "thorough and efficient," then, is the responsibility of the Legislature no matter what agency or officer developed the definition in the first instance.

So far as the public body or officer to which authority might be delegated, there are several obvious possibilities and several less obvious ones. The existing pattern of the State's education laws suggests that the State Board of Education and State Commissioner are the most likely delegees. The State Board, for example, is already charged with the "general supervision and control of public education in the state" and with formulating plans and making "recommendations for the unified, continuous and efficient development of public education... of people of all ages within the state." N.J.S.A. 18A:4-10. It must also "report annually to the legislature in regard to all matters committed to its care." N.J.S.A. 18A:4-20. Similarly, the Commissioner is charged with "supervision of all schools of the state receiving support or aid from state appropriations..., and he shall enforce all rules prescribed by the state board." N.J.S.A. 18A:4-23. In fact, the Commissioner is already required, "by direction or with the approval of the state board, ...[to] inquire into and ascertain the thoroughness and efficiency of operation of any of the schools of the public school system of the state." N.J.S.A. 18A:4-24.

Delegating the authority to flesh out a definition of "thorough and efficient" to the State Board and/or Commissioner has the following important advantages: (a) they are the major public repositories of educational program and administration expertise; (b) they would provide a statewide perspective necessary for implementation of the Court's requirement that educational opportunities be equalized in every district of the State and that public education be recognized as a state system; (c) they have had the most germane experience of any public bodies since they have for many years been operating under statutory provisions, such as the ones referred to above, which have given them overall responsibility for supervising the "thorough and efficient" system of free public schools. A major potential disadvantage of vesting virtually exclusive definitional responsibility in the State Board and Commissioner is that they might not be adequately sensitive and responsive to differing local circumstances and needs.\*

An alternative delegation of authority, at the other end of the spectrum, would involve vesting relatively complete responsibility in the approximately 600 local school districts. Assuming they acted individually and not collectively, there are several serious disadvantages of this approach: (a) the "thorough and efficient" definition which emerged would be very unlikely to promote statewide equality of educational opportunity (In effect there would be 600 definitions which differed based

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\*On the other hand, some have seen the state education authorities as too influenced by local wishes, if not needs.

not only on local interests but also local expertise, local commitment to education, and perhaps local willingness or ability to raise funds. When the Court spoke in Robinson of "the State" defining "thorough and efficient" it surely had some other mechanism in mind.); (b) the creation of a direct chain of responsibility between the Legislature and local school districts would be inconsistent with the existing administrative structure and philosophy under which the state education authorities play an important intermediate role; (c) local school districts have had little experience in formally defining and applying concepts like "thorough and efficient."

Two final possibilities as delegees are county superintendents or the Governor. County superintendents may seem to offer an appealing compromise between the relative isolation of state officials and the relative parochialism of local school districts. However, as a practical matter, county superintendents' offices generally have neither the expertise nor resources to effectively perform the function of defining "thorough and efficient." This arrangement would also arguably be incompatible with the Court's requirement that "the State" provide a definition.

Although there are no expressly greater restrictions on delegating authority to the Governor than to other parts of the executive branch of government, there are several reasons why delegation to the Governor of responsibility to define "thorough and efficient" would be less appropriate than delegation to the State Board and Commissioner. The Governor is charged with

exercising the general executive power of the State and with supervision of all departments of the executive branch. N.J. Const. Art. IV, Sec. 1, Para. 1 & N.J. Const. Art. IV, Sec. 4, Para. 2. This seems inconsistent with the Legislature choosing to delegate specific responsibilities in a defined area to the Governor. As a matter of expertise or resources, the Governor and his immediate staff may not be able to discharge effectively a range of such specific responsibilities. In that event, the Governor would presumably re-delegate the responsibility in question, probably to the State Board and Commissioner in the case of defining "thorough and efficient."\*

However the matter of who should be the delegee is resolved, there is the further question of what should be delegated. The Legislature must at least provide some basic guidelines. The courts have been quite lenient in enforcing this requirement, however. Yet the failure of the Legislature to provide guidelines regarding definition of "thorough and efficient" by the State Board and Commissioner (as well as the failure to explicitly require the development of a meaningful definition) surely contributed to the result in Robinson. Beyond the establishment of basic guidelines, the Legislature has discretion to do as little or as much as it wishes in narrowing the scope of the delegation of authority.

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\*This is not to suggest that the Governor ought to refrain from any participation in the definitional process. Quite commonly, of course, legislative proposals emanate from the Governor's staff when issues of broad public importance, such as this one, are involved.

On balance, the following approach to who should define "thorough and efficient" would seem to offer the maximum advantages:

a. The Legislature should enact a general statute providing the broad outlines of the "thorough and efficient" definition, including a statement of essential objectives and standards. That statute should also require the State Board, acting on the recommendations of the Commissioner, to develop a more detailed definition in conformity with the legislative guidelines. The Legislature should also act with specificity to mandate the establishment of educational programs which are regarded as necessary for the attainment of a "thorough and efficient system of free system of public schools." Examples would be special education for the handicapped (which is already the subject of detailed legislation), bilingual education, compensatory education, early childhood education, etc. Finally, the Legislature should specifically legislate regarding the power and duty of the State to monitor the educational process and to ensure that appropriate corrective action is taken in the event of deficiencies.

b. The State Board and Commissioner should promulgate regulations (and/or adopt guidelines of less formality) to discharge their responsibilities. The regulations (or guidelines) could provide for local participation in the implementation of the thorough and efficient system of

free public schools. But the State's definition should, for the reasons expressed above, be sufficiently comprehensive to ensure statewide equality of opportunity in all facets of the educational program.

2. What meanings have "thorough and efficient" had? In general, to construe the meaning of "thorough and efficient", one may look to the "generally accepted meaning" of the words (N.J.S.A. 1:1-1)\*; the intent of the 1874-5 legislature which twice passed the amendment adding this constitutional phrase; the meaning given to the phrase both contemporaneously with its enactment and subsequently by experts in the field; and the construction which the courts of New Jersey and other states have applied to these words.

The literal definitions ascribed to the words "thorough" and "efficient", as found in Webster's 3d International Dictionary (1966 ed.), are as follows: "Thorough" is marked by completeness, mastery, and sound systematic attention to all aspects and details. "Efficient" is marked by an ability to choose and use the most effective and least wasteful means of doing a task or accomplishing a purpose; effective to an end; causally productive; using resources to facilitate the serving of a purpose in the best possible manner.

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\*"In the construction of the laws and statutes of this state... words and phrases shall be read and construed with their context, and shall... be given their generally accepted meaning, according to the approved usage of the language."

These definitions make clear that a thorough and efficient education must be as complete as possible; it must be effective in producing an educated citizenry. The phrase cannot be construed to mean the least possible, or the minimal, or even a basic, education.

In construing a fundamental law such as a written constitution which has been adopted by a majority of all the people, it is incumbent upon the courts to assume that the language is used in the ordinary acceptance and, if the provision in question is plain and clear on its face, it is to be interpreted literally. Johnson v. Christ Hospital, 84 N.J. Super. 541, 556-7 (1964), aff'd., 45 N.J. 108 (1965)

a. The meaning in 1875. The plain meaning of "thorough and efficient" is fully supported by the history of the constitutional amendment and by the prevailing construction of the words at the time they were added to the constitution, both of which are valid and accepted bases for giving meaning to a constitutional provision. See, e.g., City of Newark v. Board of Equalization of Taxes, 80 N.J.L. 258 (Sup. Ct. 1910), aff'd., 81 N.J.L. 417 (E. & A. 1911).

The amendment was ratified by the people of the State in 1875 at the high point in the movement to establish a statewide system of free public schools - a movement which began in the early 1800's to take financial and political responsibility away from local, often religiously based, schools. See West, Elementary Education in New Jersey, A History (1964); Leech, The Constitutional & Legal Basis of Education in New Jersey (1932); Murray, "New Jersey School Conditions", Education Review (1912).

The "thorough and efficient" clause was not part of the original language of the amendment which was presented to the Legislature in November, 1873. The Constitutional Commission's language read:

Public schools shall be established and maintained for the gratuitous instruction of all persons in the State between the ages of 5 and 18 years, such schools to give rudimentary instruction and not to fit or prepare scholars for college.... N.Y. Times, November 24, 1873, p. 2:4. (Emphasis added.)

But, significantly, the legislators deleted the word "rudimentary" and replaced it with "thorough and efficient" to describe the quantum of education that the State must undertake to provide. The Legislature also deleted the words "and not to fit or prepare scholars for college." These changes clearly demonstrate that the Legislatures and the people of New Jersey who adopted the amendment consciously rejected maintaining a state system of free public schools which provided for only minimal, merely satisfactory, instruction; instead they set their sights higher, toward a complete, productive and effective educational system. Indeed, even in 1875, when only a small fraction of all the State's children were continuing their education in colleges, the legislators and people of the State expressly rejected the limitation that a free public education need not qualify students for college.

b. The evolving meaning between 1875 and Robinson v. Cahill. There is broad support for the proposition that,

at the time of the amendment's passage and since, the thoroughness and efficiency of New Jersey's school system has been geared to the ability of its graduates to participate fully in a democratic society and to contribute to the state's welfare. See, supra, Murray, at 405; Leech, at 29; West, at vii, 30.

In the 18th Century, people were fighting for common public education as the chief means to advance in a democratic society. In the early 20th Century the public school was of tremendous importance in giving to the new immigrants the knowledge and skills required for adapting themselves to their adopted country. Today, the schools are in the forefront in the struggle of racial groups for the realization of equality of opportunity. West, supra, at vii.

This view has also been enunciated by a variety of New Jersey public officials over a span of almost 100 years to explain the State's vital interest in providing all its children with a comprehensive education. Many of these officials have also spoken to the need for all citizens of the State to bear equally the costs of this educational system.

State Superintendent of Schools Apgar, 1878: "It being for the common good that all citizens, so far as possible, shall be educated, it becomes a wise policy, on the part of the State, to place within the reach of all the opportunity of acquiring this education and it is simply a matter of equity that the expenses incurred in maintaining schools... shall be borne by all alike."

State Superintendent Baxter, 1900: "The theory on which our public school system is founded is that it is for the benefit of the state, and not of the individual per se, that he should be prepared for citizenship, be educated sufficiently to do his work efficiently, and add to the material prosperity of the community in which he lives. With this end in view, the state levies a school tax to be used for the equal benefit of all the people of the state." (State School Report, Leech, at 11.)

Commissioner of Education Kendall, 1910: "The education of the masses is of so vital importance to society and to the state that many intelligent citizens incline to the belief that no portion of the support of schools of any district should ever be dependent upon the measure of correct educational sentiment that shall happen to prevail therein." (State School Report, Leech, at 17).

Superintendent of Public Schools in Delaware Co., (1932): "[B]ased on the Constitution, laws, decisions, rules and statements of officials... the state is interested in education primarily for selfish reasons, since education is necessary to the continued existence of the democratic state.... State contributions to education are on the one hand evidence of state equity in the system, and also serve to stimulate local effort and to equalize burdens of expense among school districts of varying degrees of financial competency." Leech, at 24.

Alvin Burger, Director of Governmental Research,  
N.J. State Chamber of Commerce, 1940: "Public education  
is charged with the greatest responsibilities, namely,  
that of training and fitting our children for places of  
usefulness in this complex economic society, and for con-  
structive roles as citizens of this democracy." (Address:  
"Is the Cost of Education in N.J. Too High? Yes." Dec. 7,  
1940). (Emphasis added.)

Commissioner of Education Raubinger, 1954: "Histori-  
cally, the establishment of our free, tax supported system  
of public schools grew out of and was a part of the great  
experiment in self government which was begun in this  
country in the last quarter of the 18th Century.... Educa-  
tion was imperative to and inseparable from enlightened  
self-rule." (N.J. Citizen's Rights and Responsibilities,  
American Historical Committee, State Dept. of Education,  
1954).

Governor Robert Meyner, 1955: "When each citizen has  
an equal vote and must bear his part of the public tax, and  
is subject to a call to protect his country in time of dan-  
ger, then it is to the interest of all citizens that our  
school system be the best we can maintain." (N.J. White  
House Conference on Education, Trenton, May 20, 21, 1955).  
(Emphasis added.)

N.J. Board of Higher Education, 1970: "Education benefits society as well as the individual. Our economy cannot operate without millions of highly educated persons. Our democratic political system is dependent on the responsible participation of educated men and women. The quality of our social and cultural life depends on the values and creativity of our educated citizenry." (Goals for Higher Education in N.J., Jan., 1970).

The New Jersey courts have enunciated the purposes of education in similar terms. Education must be "causally productive" to be meaningful in our state. An important 1895 case, Landis v. Ashworth, 57 N.J.L. 509 (Sup. Ct. 1895), perceived the "thorough and efficient" standard in just these terms:

Its [the 1875 amendment to the New Jersey Constitution] purpose was to impose on the legislature a duty of providing for a thorough and efficient system of free schools, capable of affording to every child such instruction as is necessary to fit it for the ordinary duties of citizenship.

Because "thorough and efficient" has been defined by reference to the demands and requirements of the larger society, the criteria for a constitutionally acceptable standard of education must evolve as that society changes. The New Jersey Supreme Court recognized that principle when it said in Booker v. Plainfield Board of Education, 45 N.J. 161, 170-171 (1965), that the teaching of the "3 R's" alone would be insufficient to prepare a student for "the ordinary duties of citizenship" in contemporary American society.

More is required than mere rote learning, for "[i]t is during [the children's] formative school years that firm foundations may be laid for good citizenship and broad participation in the mainstream of affairs."

Indeed, with respect to economic participation, American society is changing in a particularly significant way. This change is reflected in increased automation in farming, manufacturing and elsewhere. Consequently, virtually all projections indicate that job availability in the future will be increasingly for professionals, white collar employees and skilled laborers, and decreasingly for general laborers and other unskilled persons. See, e.g., D. Rice, "Employment and Occupations in the Seventies," Educational Leadership, (1965); D. Michael, "The Next Twenty Years," The Next Generation (1965); and S.M. Mitler, "The Outlook of Working-Class Youth," Blue-Collar World (1964).

While it is possible for one to learn skills on the job, the technological explosions and social forces affecting the job market have already produced progressively higher entry-level education background and skill requirements. Thus, to prepare children for "broad participation" in the economic order, the schools must provide them with more than the kind of basic skills and knowledge that in a simpler age would have prepared them for unskilled labor. Increasingly, to be a productive member of society workers will have to understand computer systems, automated programs

and facilities, and cybernetic actions of business and government. See D. Michael, supra.\*

New Jersey's recognition of this educational objective, as mandated by Art. VIII, Sec. IV, Par. 1, of the Constitution, and as further enunciated between 1875 and Robinson by public officials and the courts, is echoed and strengthened by the decisions of other courts, including the United States Supreme Court. In West Virginia Board of Education v. Barnett, 319 U.S. 624, 637 (1943), the Court noted that boards of education are "educating the young for citizenship." The court reiterated in Brown v.

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\*In this connection, the remarks of the New York Court of Appeals in Council of Supervisory Assns. v. Board of Education, 23 N.Y.2d 458 (1969), are particularly compelling. In discussing the objectives of New York's educational system, particularly with reference to minority group children from ghetto areas, the Court there frames them in citizenship output terms: "The testing standards of educational ability and performance [in the past] were, naturally enough, measured by achievement valued by professional teachers, e.g., reading, arithmetic, writing, spelling, correct speech. While these skills are not, of course, the ultimate test of either the intelligence or the potential development of a child, they seem to be the indispensable bases of personal success in any technically highly developed country of our period. To see this in broad perspective it might be useful to compare the demands for technical skills in the United States, England, France, Japan and Russia..... It became obvious that traditional public school teaching was not succeeding in imparting to a very substantial segment of children the basic educational tools needed for economic usefulness. This failure to teach what is indispensable to any significant personal opportunity in present day life had two main consequences: it tended to compel the child as he grew up to remain in the dismal and ghetto-like conditions of an economically underprivileged community and to solidify the alienation of that community with fateful consequences....." 23 N.Y.2d at 462-63 (Emphasis added.)

Board of Education, 347 U.S. 483, 493 (1954), that education is the "foundation of good citizenship." And, in Keyishian v. Board of Regents, 385 U.S. 589, 603 (1966), the classroom was characterized as "peculiarly the 'market-place of ideas'." "The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth...." Tinker v. Des Moines Community School Dist., 393 U.S. 503, 512 (1968).

A significant number of states have incorporated into their constitutions substantially the same provision as New Jersey with respect to the state's duty to provide a "thorough and efficient" system of public education to all children of the state.\*

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\*Provisions similar to the Education Clause of the New Jersey Constitution are found in the constitutions of at least 16 other states. The "thorough and efficient" formulation is wholly included in the constitutions of Maryland (Art. 8, §1), Ohio (Art. VI, §2), Pennsylvania (Art 3, §14), and West Virginia (Art. 12, §1). Colorado (Art. 9, §2) and Idaho (Art. 9, §1) establish a "thorough and uniform system." Montana's constitutional provision provides for a "general, uniform and thorough system of public...schools" (Art. 8, §1). Kentucky (§183) and Virginia (Art. VIII, §1) require an efficient system. In Iowa (Art. 9, §12), the Constitutional provision is for a thorough system of education. The Maine (Art. 8, §1) and Texas (Art. VII, §1) constitutions guarantee suitable and efficient education. Indiana's provision (Art. 8, §1) is for a suitable, general and uniform system. In Georgia, the Constitution provides for an "adequate" education (Art. VIII, §1). A "complete and uniform" and a "general and efficient" one is required in Delaware (Art. 985).

It is clear from the case law in these states (1) that the measure of thorough and efficient (or thorough and uniform, or general and efficient, etc.) there too is the fulfillment of the state's goal of an educated and productive citizenry, and (2) that such measure changes with evolving societal conditions.

Thus, in Illinois "the primary purpose of the maintenance of the common school system is the promotion of the general intelligence of the people constituting a body politic, and thereby to increase the usefulness and efficiency of the citizens on which the government of society depends." Lee v. Board of Education, 234 Ill. App. 141, 146-7 (1925).

The Montana courts have made an equally clear statement of this purpose.

The primary purpose of the... school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens upon which the government of society depends..., [The public school system is a] governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship. State v. School District No. 73, 76 P.2d 330, 332 (Mont. 1938)

The "general, uniform and thorough system" of public education required by the Constitution of Montana, Art. XI, Sec. 1, was further defined in the following terms: "the common schools are doorways opening into chambers of science, art and the learned professions, as well as into fields of

industrial and commercial activities.... These are rights and privileges that cannot be denied." Grant v. Michaels, 23 P.2d 266, 271 (Mont. 1933).

In keeping with these broad statements of principle in New Jersey and other states about the changing meaning of "thorough and efficient," there have been actual changes in the prevailing educational program. In 1875, and for several decades thereafter, the requirement of a "thorough and efficient system of free public schools" was thought to be satisfied by a good elementary school program. Free public secondary schools were not generally provided. Indeed, the Landis case, Supra, involved an assertion that it was unconstitutional for some school districts to provide public high schools while most did not. The Court rejected that argument, stating:

Nor can I think that the constitution requires the legislature to provide the same means of instruction for every child in the state. A scheme to accomplish that result would compel either the abandonment of all public schools designed for the higher education of youth or the establishment of such schools in every section of the state within reach of daily attendance by all the children there residing. Neither of these consequences was contemplated by the amendment of 1875. Its purpose was to impose on the legislature a duty of providing for a thorough and efficient system of free schools, capable of affording to every child such instruction as is necessary to fit it for the ordinary duties of citizenship; and such provision our school laws would make if properly executed, with the view of securing the common rights of all, before tendering peculiar advantages to any. But, beyond this constitutional obligation, there still exists the power of the legislature to provide, either directly or indirectly, in its discretion, for the further instruction of youth in such branches of learning as, though not essential, are yet conducive to the public service. On this power, I think, rest the laws under which special opportunities for education at public expense are enjoyed. 57 N.J.L. at 512.

Since 1895, when Landis was decided, societal conditions and educational expectations have surely changed, and with them the definition of "thorough and efficient." For example, secondary schools have been an integral part of the State's public education system for many years.\* N.J.S.A. 18A:45-1. Thus, "thorough and efficient" has been a relative concept in two senses: (1) relative to the needs and aspirations of the larger society, and (2) relative to what schools generally are providing.

c. The impact of Robinson v. Cahill on the meaning of "thorough and efficient." The decisions of the trial court and the Supreme Court in Robinson provided clarification, confirmation and broadening of the meaning of "thorough and efficient" in several important respects.

(i) The courts made clear that "thorough and efficient", as the words themselves strongly suggest, requires a high level of education.

"The word 'thorough' in the Education Clause connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal." 118 N.J. Super. at 268.

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\* During the past 20 to 30 years changing conditions have also resulted in the recognition that other kinds of educational programs must be provided. Illustratively, the State has added vocational education (N.J.S.A. 18A:54-1 et seq.), special education for the handicapped (N.J.S.A. 18A:46-1 et seq.), neighborhood education centers for school dropouts (N.J.S.A. 18A:54A-1 et seq.).

In focusing on equality of educational opportunity to achieve certain outputs, the Court also suggested that differential inputs might be required to meet educational disadvantages. At one point the Court said:

Although we have dealt with the constitutional problem in terms of dollar input per pupil, we should not be understood to mean that the State may not recognize... a need for additional dollar input to equip classes of disadvantaged children for the educational opportunity [required]. 62 N.J. at 520.

In a footnote to that statement, the Court referred to the case of Lau v. Nichols, where the federal courts considered whether non-English speaking Chinese students were entitled to be provided with bilingual compensatory education. The United States Supreme Court, after the decision in Robinson, held that they were. Justice Douglas, writing for the majority, said that: "...there is no equality of treatment merely by providing students with the same facilities, text books, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful opportunity." 94 S. Ct. 786, 788 (1974).

(iv) The New Jersey Supreme Court expanded the definition of "thorough and efficient" to include capital, as well as current operating expenses. The Court said: "The State's obligation includes as well the capital expenditures without which the required educational opportunity could not be provided." 62 N.J. at 520.

(v) The New Jersey Supreme Court reaffirmed that until all students are being provided with a "thorough and efficient" system of instruction, no district can provide more to its students. This proposition had been clearly stated in Landis when the court there said that the school laws must secure "the common rights of all, before tendering peculiar advantages to any." 57 N.J.L. at 512. The Supreme Court in Robinson specifically endorsed Landis, and went further to state that, "A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command." 62 N.J. at 513. The Court also was careful to point out that:

...if the State assumes the cost of providing the constitutional mandated education, it may... authorize local government to go further..., provided that such authorization does not become a device for diluting the State's mandated responsibility. 62 N.J. at 520 (Emphasis added.)

This view--that all children in the State must receive a thorough and efficient system of education before any children can be provided with "peculiar advantages"--is derived from the concept of a thorough and efficient statewide system. It is manifestly inefficient, in implementing a statewide system required to provide equality of educational opportunity (at least up to a substantially high level), to permit some districts to provide more than the required level of educa-

tional opportunity while other districts may be striving vainly to reach the required level.

The word "efficient" in the constitutional provision also has other import. Since the goal of public education is to produce fully informed and productive citizens able to meet the demands of a modern industrial society, then providing less than the required level of education is not only inconsistent with the constitutional requirement of a "thorough" education; it is also inefficient. The fiscal efficiency of the public schools must be determined from a broad perspective. A strong, positive correlation exists between the level of educational attainment and economic factors such as income, productivity, standard of living and employment. States with the lowest per capita support of education are also lowest in these economic indicators. See 1971 U.S. Statistical Abstracts. The fiscal efficiency of the public schools must also be determined from the point of view of the cost of dealing with its failures. Rising crime rates, drug addiction levels and welfare rolls all drain vast amounts of State and local funds, and constitute an enormous waste of human potential. All correlate to inadequate education and high drop-out rates. See, e.g., Governor's Select Commission on Civil Disorder, Report for Action (1968); 1971 U.S. Statistical Abstracts. As the trial court said:

It is too much to expect that our school system alone can solve all these problems. But much can be done, and doing more will cost more. Education is no exception to this fact of life. 118 N.J. Super. at 257.

Ironically, though, doing less with our public education system may cost more, too. Savings in terms of lower education expenditures are more than consumed in higher costs for juvenile delinquents, welfare recipients and other dropouts from our schools and our society. In New Jersey, for example, it has been costing the State as much as \$16,500 per year to maintain one child in a juvenile detention facility. The national average to provide 14 years of schooling (through junior college) for one child has been approximately \$15,000.

This is not to suggest, of course, that going to school will prevent criminality; it is clear, however, that provision of a thorough education substantially reduces delinquency and provides real opportunities for economically rewarding employment and a higher standard of living. For some of the excellent studies and treatises illuminating these conclusions, see Halsey, Floud & Anderson, Education, Economy and Society (1963; D. Rice, "Employment and Occupations in the Seventies," Educational Leadership (1965); Miller, "The Outlook of Working-Class Youth," Blue Collar World (1964); Havighurst & Neugarten, Society & Education (1962); Linton & Nelson, Patterns of

Power: Social Foundation of Education (1968); Brembeck, Social Foundations of Education (1971); Nelson & Besag, Sociological Perspectives in Education (1970); Sexton, Education & Income, Inequality of Opportunity in the Public Schools (1961).

(vi) The New Jersey Supreme Court made explicit the need to continually update the meaning of "thorough and efficient." After quoting from Landis with approval, the Court said:

Landis could be misread if it is not kept in mind that when Landis was decided (1895), secondary schooling as we know it today was not generally available.... It was not then an attribute of a thorough and efficient system of public schooling, and for that reason Landis found the constitutional requirement was not offended by the fact that "higher education" was not available for all children. But Landis held that the education comprehended by the constitutional obligation must be met by "securing the common rights of all." And Landis of course did not say the common rights were those of 1875 or 1895. Today, a system of public education which did not offer high school education would hardly be thorough and efficient. The Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market. 62 N.J. at 515 (Emphasis added.)

(vii) Finally, the Supreme Court gave direct support to the proposition that students can sue under the Constitution's education clause to enforce against the State their right to a "thorough and efficient" system of free public schools. This may have significant

implications for the future should the State fail to adequately respond to Robinson's requirement that it define and implement such a system.

3. Does "thorough" apply to the extensiveness of the school experience made available or to the intensity of efforts in particular areas of study? Either there may be no meaningful difference between these two, or the answer may be both. As has been indicated, the State must provide every student with "that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market." 62 N.J. at 515. That requirement embodies both a certain extensiveness and intensity of approach. To focus on one or the other would pose serious problems in meeting the Robinson mandate.

For a school experience to contain elements reasonably designed to produce effective citizens and competitors in the labor market, it must be quite extensive (i.e., civics, history, basic skill areas, vocational or higher education qualifying skills, physical education, health, creative arts). Moreover, within those areas there must be an intensity of effort geared toward student achievement of sufficient proficiency to qualify them for meaningful participation in those two domains. Hopefully, educators, and the public at large, not lawyers will define with particularity what the school experience should cover and what intensity of effort should be devoted.

4. Does the word "efficient" apply to all activities of all public schools in the State, or might its application be limited to only the State-funded portion of a public school activity? For some of the reasons already expressed, the word "efficient" must apply to all activities of all public schools in the State. Public education is a state system in its totality even if it is operated and funded partially by local school districts. They serve as agents of the State and the State is ultimately responsible for the provision of a "thorough and efficient system of free public schools." The Supreme Court said in Robinson that if any district provides less than a thorough and efficient system of instruction, for any reason, the obligation is the State's to rectify it." 62 N.J. at 513. (Emphasis added.)

The only conceivable theory for limiting the application of "efficient" to the State-funded portion of educational costs is if the State were to utilize "full state funding" (under which it directly provided all funds necessary for a "thorough" education). Then, amounts raised locally would in theory be free of the state-wide "efficient" requirement. There are, however, three significant caveats:

- a. Local districts are not free to go beyond the "thorough and efficient" level until all districts have actually reached that level.
- b. Unlimited local leeway may lead, as a practical matter, to serious constitutional problems. As was true under the

foundation plan (which was designed to assure all districts enough funds to maintain a satisfactory educational level)\*, the existence of unlimited local leeway may lead to pressure on the State to keep down the state mandated and guaranteed expenditures level in order to permit wealthy districts to raise the bulk of their funds out of their plentiful local ratables.\*\* Both the trial court and the Supreme Court in Robinson expressed concern about this possibility. See 118 N.J. Super. at 278 n.21 and 62 N.J. at 520.

The Supreme Court, in particular, warned that local leeway could "not become a device for diluting the State's mandated responsibility." 62 N.J. at 520.

A local leeway arrangement which was carefully defined and limited, and which provided for state equalization of poorer districts, could avoid constitutional problems.

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\*The highest foundation level in New Jersey was \$400 at a time when the average educational expenditure per pupil was more than twice that amount.

\*\*For exactly this reason, the Fleischmann Commission in New York urged no local leeway and the President's Commission on School Finance recommended a limit of 10 percent of total expenditures.

c. Since "thorough and efficient" will inevitably be defined, to some extent, in relationship to what level of education is actually being provided within the State, what may be today a "peculiar advantage" offered to its students by some school districts, may become tomorrow a "common right" required to be offered to all students throughout the State. In that event, the concept of efficiency will become applicable to those particular educational opportunities.