

# Co-Rechting West Virginia's Schools

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Judge Arthur Recht's ruling in *Pauley v. Bailey*, which challenged the quality of public education in West Virginia, offers a set of standards to guide educators, lawmakers, and the public as they work toward common goals.

For the past two years, West Virginians have lived in the wake of a case that found the financing of the public schools to be unconstitutional and mandated massive reforms in the delivery of education over the next 17 years. *Pauley v. Bailey* has come to symbolize for some a great hope, a promise for the state to transcend a high unemployment rate and poor economy. For others it's a compact way to meet the challenge of *A Nation At Risk*—to be a trendsetter.

## The Pauley Case

The case began in 1975 when Janet Pauley filed a suit against the state because, in her judgment, her five children were not receiving a "thorough and efficient" education in the Lincoln County schools, as required by the state's constitution. She claimed that the state's financing system discriminated against those counties that had less property wealth and that the Pauley children did not have access to quality education in Lincoln County, one of the poor counties in the state.<sup>1</sup>

After six years, the reversal of a lower court ruling, and testimony of educational experts in a non-jury trial, Judge Arthur Recht found that the financing of education was unconstitutional and the Lincoln County schools were not only less than thorough and efficient but also "woefully inadequate."<sup>2</sup>

The 244-page ruling mandated state-wide quality standards for curriculum, personnel, facilities, equipment, and

materials for each subject. These standards included such things as the number of minutes of math instruction per day per grade level, the square footage of classroom space per child, and dollars per pupil for art supplies.<sup>3</sup> Such a detailed prescription of quality standards makes this school finance case precedent-setting.<sup>4</sup>

Talk of an appeal was quickly dismissed as the State Department of Education formed a Committee of 99 to develop a "master plan" for implementing these standards.<sup>5</sup> The plan includes a "blueprint" to upgrade such items as school facilities, teacher salaries, and state and county approved programs of study.

The judge approved this 500-page plan with minor modifications. Although it is "shaped to the contours of his [court] order with remarkable fidelity,"<sup>6</sup> it goes beyond the original mandates. The master plan includes no-cost items such as percent ranges for instructional time per day; staffing ratios for every role from psychologist to aide; direct whole-group instruction; and an evaluation system based on the popular teacher and school effectiveness research. It even specifies in greater detail that reading teachers, for example, are to "distribute questions equally to all members of the class and are guiding and supportive in their feedback."<sup>7</sup>

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## **“Judge Arthur Recht found that the financing of education was unconstitutional and the Lincoln County schools were not only less than thorough and efficient but also ‘woefully inadequate.’”**

The master plan has been described as “a living breathing document which will be revised as needs change... a road map.”<sup>18</sup> It is also something that the state superintendent admitted that the state department and board “had been working on... before... Recht ever mentioned [it].”<sup>19</sup>

### **Lawmakers Respond**

Governor Rockefeller originally opposed the ruling, claiming that the state “can’t have more than we can reasonably expect people to pay for, particularly when so many people aren’t working.”<sup>20</sup> Such opposition was met with criticism, however. The executive secretary of the state teacher association responded, “People in West Virginia were told they’re poor, improperly educated, and they’re going to stay that way. That’s not the message they should have been given.”<sup>21</sup> Since then, and since the governor’s campaign for a seat on the U.S. Senate, he has changed his mind.<sup>22</sup>

Response from the legislature has varied. One senator suggested that Judge Recht get a haircut because “... it was a long-haired decision and I equate that with the hippie clan.”<sup>23</sup> One legislator replied, “The legislative

and executive branches are always fighting. Why not bring the judiciary in on the brawl?”<sup>24</sup> Yet another senator felt that “it was a once-in-a-lifetime opportunity to ensure that children who grow up in West Virginia have an equal chance to compete with the rest of society.”<sup>25</sup>

After inertia in 1983, both legislators and governor made education number one on the agenda in 1984. They passed a comprehensive legislative package for education that included a 7.5 percent salary increase for all teachers and service personnel; a \$29 million dollar plan to equalize pay among the 55 counties; funds for tests to measure learning outcomes; a week-long principals’ academy; and resolutions to place a Quality Schools Amendment, which would finance the improvements, on the fall ballot. This amendment proposed a state bond issue to raise money for school construction and impose a statewide excess property levy for schools to replace the excess levies that have caused the financial disparities among the counties. The amendment was defeated, and at his first press conference, a newly elected governor, Arch Moore, stated he would use whatever power he had to delay court-ordered school improvements he thinks the state cannot afford.<sup>26</sup>

### **State Educators Respond**

Although the state administrators’ association officially supported the ruling, individual responses have varied depending on whether a county will receive or lose funds and on how the county complies with the high quality standards. Since the counties will lose their ability to have excess levies, some of the industrial counties may lose funds to property-poor areas. One superintendent in a sparsely populated rural county “felt ecstatic... [since it] could bring needed money to his county’s system.”<sup>27</sup> Although another superintendent felt that the standards were “excessive and unrealistic,” he also felt that “a long hard look at the educational system was long overdue.”<sup>28</sup> Some believe the ruling will result in a shift from local to

state control of education,<sup>29</sup> while others think the benefits will be worth the costs.<sup>20</sup> Still others predict the master plan “soon will become the national standard for judging school systems.”<sup>21</sup>

The state teacher association has also supported the ruling and has greatly benefited. As a vice president of the association claimed, “money is the only thing that will help.”<sup>22</sup> The association did, however, file a minority report against the master plan, claiming that it failed to address such issues as merit pay and competency testing.

### **The Judge**

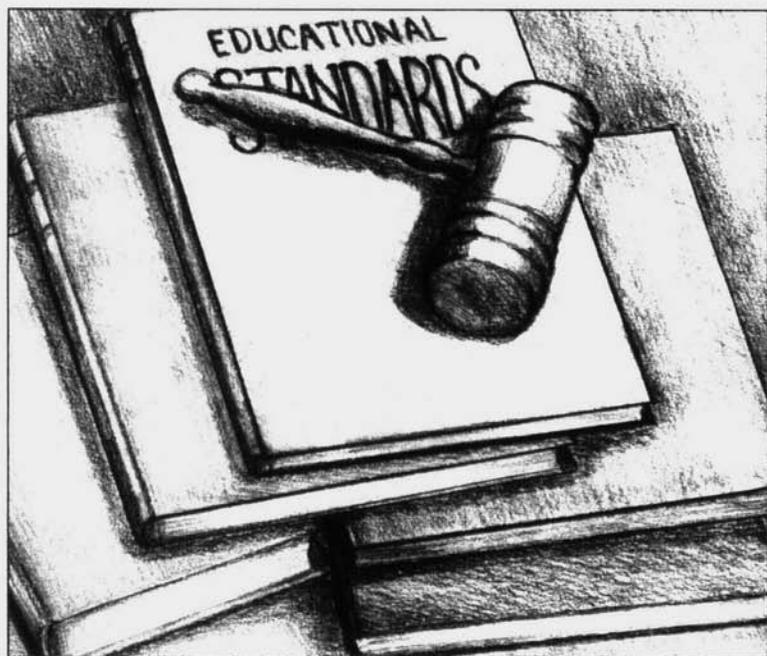
Judge Arthur Recht, who claimed he had “never given education a great deal of thought until this trial,”<sup>23</sup> was named West Virginian of the Year in 1982 and became a lightning rod for complaints about judicial activism. He has since resigned to return to private practice.

Prior to his resignation, however, he was involved in a second publicized case involving a state maximum security penitentiary that was found to be antiquated and constitutionally impermissible. On a tour of the prison Recht found fire hazards, open sewers, overcrowding, and rats. He ordered state officials to bring the penitentiary into compliance, but without a timetable and without specific standards. His order allowed state officials the opportunity to put their own house in order. It was also a softer and less prescriptive approach than that taken in *Pauley v. Bailey*.<sup>24</sup>

In his first public meeting before educators since this ruling, in May 1984, Recht addressed the unjustified criticisms and reminded all that the court still retained jurisdiction in this time of transition to a “thorough and efficient” system.

### **The Opposition**

Two groups have openly opposed the master plan: the West Virginia Education Project (WVEP) and a loose coalition. Although opposition to such a statewide phenomenon could be interpreted as opposing quality education, these groups have done their



best to establish credibility and to take issue with aspects of the master plan.

The WVEP is a group of professionals, parents, and citizens interested in the education of their children and the future of their state. It is headed by a well-known rural activist and resident of Lincoln County. WVEP claims that the state department of education, a defendant in the case, should not have directed the development of the plan. Instead they favored the appointment of a special commissioner, as found in the original order. They also believe that the plan calls for a standardization of all schools that will lead to "excessively rigid, overly regulated, heavily bureaucratic..." schools.<sup>25</sup> They filed an appeal early in 1984.

Another opposition is a loose coalition of teachers, administrators, and local county board of education members who spoke out against the master plan at a state board meeting. They oppose the state controlled curriculum, the loss of student individualism, loss of local control, and interference with teaching methods.<sup>26</sup>

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### **A Postscript**

*Pauley v. Bailey* and the master plan have provided a spotlight for some to claim that the state has a "two-year head start on the rest of the nation" and affirm their hope that the state will become the "Mayo Clinic of education."<sup>27</sup> The master plan has been called a "blueprint," "road map," "bold approach to solving educational problems," "a once-in-a-lifetime opportunity," "a living, breathing document." It has also become highly popularized, reaching the slogan-on-a-T-shirt phase,<sup>28</sup> and an item on one of the state's competency tests for administrators.

In comparison, 32 states have mounted school improvement efforts within the past four years and another 14 are in the planning stage.<sup>29</sup> What makes West Virginia's efforts so different? It was mandated by a six-year-old court case that crested at the same time as the national cry for school reform. It also came at an opportune time for West Virginians to have an excuse to focus on education.

*Pauley v. Bailey* and the master plan may help solve some of the woeful inadequacies in Lincoln County. It may also become a reason for administrators, teachers, the state department, and the lawmakers to work toward common goals. Or it may become an excuse for groups to do or not do things. As long as educators do not claim more than can be delivered, this or any state plan for school improvement may serve to keep education number one on the agenda and provide a somewhat rational basis for making decisions about improving the public schools.□

<sup>1</sup>For a more detailed history of the case, see R. Truby, "Pauley v. Bailey and the West Virginia Plan," *Pbi Delta Kappan* 65 (December 1983): 284-286.

<sup>2</sup>*Pauley et al. v. Bailey et al.* Civil Action No. 74-1268, Circuit Court, Kanawha County, West Virginia, May 14, 1982: 100.

<sup>3</sup>See H. M. Hazi, "Judge Defines Quality Education for Schools," *Educational Leadership* 41 (September 1983): 68-69.

<sup>4</sup>For a comprehensive analysis of the 19 states that have had such cases, see M. M. McCarthy and P. T. Deignan, *What Legally*

*Constitutes an Adequate Public Education?* (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1982).

<sup>5</sup>The ruling called for a court-appointed commissioner to develop the plan, but in a supplemental order the state superintendent and state board of education were given that charge.

<sup>6</sup>"Recht OKs most of Education 'Blueprint,'" *Sunday Gazette-Mail*, March 6, 1983, p. 1.

*Master Plan for Public Education* (Charleston, W.V.: West Virginia Board of Education, December 1983) p. 106.

<sup>7</sup>R. Truby, "Summary and Conclusions of a Living, Breathing Document..." *State Ed* (February 1983): 8-9.

<sup>8</sup>"Half of Recht's Proposals May Be Fulfilled By 1986," *Charleston-Daily Mail*, September 20, 1983, p. 1.

<sup>9</sup>"Jay Says School Ruling May Cost Taxpayers \$2 Billion," *The Inter-Mountain*, May 22, 1982.

<sup>10</sup>"Jay Promises Never to Propose Hikes to Implement Recht Ruling," *Charleston Daily Mail*, July 23, 1982.

<sup>11</sup>"Jay Changed Mind About Recht Decision," *Charleston Gazette*, January 13, 1984.

<sup>12</sup>"Battle Foreseen Over Recht Decision," *Charleston Gazette*, May 15, 1982, p. 5B.

<sup>13</sup>"Governor's Critics Praise Lambasting of Supreme Court," *Charleston Daily Mail*, July 23, 1982.

<sup>14</sup>"Recht: West Virginian of the Year," *Gazette-Mail*, January 2, 1983, p. D1.

<sup>15</sup>"Moore Says Courts Won't Bully Him," *Dominion Post*, November 9, 1984, p. 1a.

<sup>16</sup>"School Ruling Pleases Small Counties," *Charleston Daily Mail*, May 14, 1982, p. 7B.

<sup>17</sup>"Bowyer: Recht Ruling, Marion County Schools," *Fairmont Times*, June 9, 1982.

<sup>18</sup>"School Head Says Ruling Good, Bad," *Charleston Daily Mail*, May 18, 1982.

<sup>19</sup>"School Chiefs Applaud Court Tax Ruling," *Charleston Gazette*, July 15, 1982.

<sup>20</sup>"Educator Likes Today's Schools," *Dominion Post*, August 28, 1983, p. 2A.

<sup>21</sup>"W.V.E.A. Members Pleased With Recht Decision," *Charleston Gazette*, May 15, 1982, p. 2A.

<sup>22</sup>"Courts Have to Lead Way in Education, Judge Says," *Charleston Daily Mail*, May 14, 1982, p. 7B.

<sup>23</sup>"Judge Recht's Decision on Prison Softer Than School System Ruling," *Charleston Gazette*, June 22, 1983.

<sup>24</sup>L. Martin, "Thorough and Efficient—Yes! School Consolidation—No! The West Virginia Education Project's Recommendations for Implementing the Recht Decision" (Griffithsville: W.V.E.P., December 1982), p. 10.

<sup>25</sup>"Educators Question Learning Outcomes," *WV School Journal*, November 18, 1983, p. 8.

<sup>26</sup>"Rising Tide of Mediocrity Has Not Engulfed West Virginia," *State Ed* (June 1983): 2.

<sup>27</sup>The T-shirt slogan is "Working to Correct West Virginia Schools."

<sup>28</sup>C. Piphon, "The Momentum of Education Reform: States On the Move," *Phi Delta Kappan* 66 (October 1984): 85.

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