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Each Child, Every Child

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Recommended Citation

Richard E. Day. "Each Child, Every Child." 6th International Symposium on Educational Reform: Effective Schools in Effective Systems (2010)

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Eastern Kentucky University

From the Selected Works of Richard E. Day

Summer July 30, 2010

Each Child, Every Child.

Richard E. Day, *Eastern Kentucky University*



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**EACH CHILD, EVERY CHILD:
THE STORY OF THE COUNCIL FOR BETTER EDUCATION,
EQUITY AND ADEQUACY IN KENTUCKY'S SCHOOLS**

Richard E. Day, Ed. D.

WELCOME

Good day to all of you attending the 6th International Symposium on Educational Reform in the Republic of South Africa.

Let me begin by thanking Dr Lars Bjork and Dr Justin Bathon of the University of Kentucky for making this presentation possible. I would also like to extend greetings to South African educational governing boards leader, Paul Colditz. I wish I could be with you at this most exciting time in South Africa - and this most challenging time for educators hoping to provide a stronger workforce and better economy for all the people.

INTRODUCTION

- People Interested in school reform – interested in the **1989** Kentucky Case - ***Rose v. Council for Better Education***
 - cited 380+ times in US

- WHY the interest?
 - Because Kentucky had NOT been seen as a leader in education before that time.
- When the Kentucky Supreme Court found the entire system of schools to be unconstitutional – it provided the political will for the legislature to write a new school law in **1990** called the **Kentucky Education Reform Act (KERA)**
- Metaphor –
 - Imagine the worst football team in the best league
 - Like other US states, Kentucky has shared in the benefits of universal education
 - Economy has advanced
 - People’s lives improved
- But compared to other US states - support for the schools has been a serious problem throughout Kentucky’s history.
 - Kentucky’s Constitution requires our state legislature to provide “an efficient system of common schools throughout the state”
 - define “**efficient**”
 - define “**common**”

- **“throughout the state”** refers to equity

- But our state lawmakers have been content to allow Kentucky’s schools to rank among the least supported in the nation.
 - This is about \$.
 - Out of 50 states, Kentucky ranked 49th so often - Thank god for Mississippi

- Today, I will attempt to put that struggle for adequately funded public schools into an historical context, focusing on the Kentucky Supreme Court’s landmark decision in *Rose v. Council for Better Education*.

- I examine this decision in light of present efforts to define and assure **“an adequate education for each and every child”** which is our state’s standard.
 - This is a new standard that came out of the Rose case.
 - Now declared **a fundamental right**

- The Council for Better Education began as a collection of local school superintendents from the poorest schools districts in the state.
- The activities of the Council for Better Education were part of a national effort to determine a set of **judicially manageable standards** for **equitable** and **adequate** school funding.
 - Because American courts operate under the separation of powers doctrine, judges are reluctant to tell the legislature what to do about anything.
 - If one is going to go to court – one must help the court by presenting a way for judges to determine whether the legislature has met its Constitutional obligations - or not.
 - This has led to a **standards movement** in American education
 - **Equity** refers to a relative balance of the financial resources made available to Kentucky's school districts.
 - **Adequacy** is an issue of whether schools have the resources necessary to meet the goals set by the state.
 - **When schools are inadequately funded, equity and adequacy are forced to compete.**

- When our expectations of the schools are low, we don't have to spend much money on them. However, Kentucky's assertion that ***“every child can learn and most at high levels”*** is no easy standard.
 - In this sense, an adequate education for Kentucky's children is thought of as sufficient in quality and quantity to ensure that all schools satisfy the fundamental rights of all students.

- I spent several years studying the **Council for Better Education** – a group of local school superintendents
 - Focusing on 1984 through 1993 as Kentucky sought to implement a new system of common schools.
 - Bert Combs - Council's efforts “were of sufficient merit to warrant an historical treatment,” and that “future lawyers would benefit from a chronology of Council events.”
 - Interviewed the members of the Council, the judge, the attorneys, and others
 - some insight into the **effort required** to bring about this historic result

- Local school superintendents sued the state legislature
 - The state superintendent of schools threatened their jobs
 - Legislators were mad at them and put pressure on local board members
 - It required personal courage to sustain the suit
- **Kentucky Education Reform Act** is – a true exception in Kentucky’s long history of modest support for its schools.
- *Rose v. Council for Better Education* can best be seen as a pioneering effort to alter Kentucky’s history and as a move toward more **social justice and economic prosperity** for all children of the state.

RESULTS AND DISCUSSION:

- For reasons owing to Kentucky’s **traditionalistic political culture** and **agrarian attitudes**, the Commonwealth was slow to develop a system of common schools and once finally established, support over the years was weak.

- The achievement of Kentucky's children suffered as fiscal support for the schools languished among the poorest in America along with the rest of the South.

- Litigation emerged (1968 – 1973) to challenge state systems of school finance.

- Plaintiffs were frustrated in their attempts to use the U. S.

Constitution

- Rodriguez (1973) education not a fundamental right under the US constitution
- “Equal protection” under the 14th amendment applies to individuals not governmental entities

- found more success using education clauses
- The Kentucky Supreme Court, in *Rose v. Council for Better Education*
 - Declared education to be a fundamental right
 - Reaffirmed the Legislature's sole responsibility to provide an efficient system of common schools and defined the elements of that system.

- HERE'S HOW IT HAPPENED

- On December 31, 1983, incoming State School Superintendent Alice McDonald, released Arnold Guess

- This act freed Guess
 - He called together a group of twenty-eight School Superintendents
 - With outstanding technical consultants
 - legal counsel
 - the Council lobbied the legislature for change
 - and threatened to sue using \$.50 per child in school funds

- The Council met with hostility from legislators who did not want to be blamed for the existing conditions, and from the State Superintendent
- When lobbying efforts failed, the Council filed suit.
- The Council greatly benefited from powerful outside forces
 - the press,
 - the Prichard Committee,
 - and a host of civic, business and education groups - all pressing for better schools.
- But despite this groundswell, the legislature tried to stop the districts from using school funds to sue the state
 - did not go far enough to satisfy the Council or forestall litigation.
- Plaintiff's attorney Bert Combs would have preferred a federal court,
- the appropriate plaintiffs
 - the children
- and who were the defendants,
 - there was no precedent for suing the state

- Do you serve every member of the legislature?
- They decided to follow the model for suing the US Congress by suing the legislative leaders
- and by determining the individuals whom would best contribute to the case.
- Separation of powers problem
 - Appropriate relief would have to be suggested carefully so as not to intrude on legislative authority.
- The plaintiffs sought a declaratory judgment that the present system was unconstitutional;
- Defense attorney, William Scent
 - argued that the inequities would not exist if the plaintiff had not mismanaged funds
 - and had passed permissive taxes
 - It is true that local officials did not want to raise taxes either
 - the Legislature had done the best they could since the people of Kentucky did not want more taxes
 - and that Kentucky is a poor state.

- Meanwhile, a statewide election produced a new Governor (who had promised no new taxes) and State Superintendent (who was a member of the Council for Better Education) while the Prichard Committee continued to forge new coalitions with business and education groups.
 - The best example of the Prichard Committee's activity may be their Town Meeting
 - 20,000 people meeting at the same time
 - in 140 locations
 - representing every school district
 - tied together by a program on Kentucky Educational Television
 - with local activities after the program
 - Or their Institute for Parent Leadership
 - They now have 1,500 people across the state who have been trained to become active in their local schools
 - Maintain contact with about 1,350 of them
- May 31, 1988, Franklin Circuit Court Judge Raymond Corns decided that the legislature had failed in their duty to provide an efficient system of schools.

- Following a principle used in a West Virginia court, Corns established an Education Committee to advise the court
- the Legislature punitively called for audits of the plaintiff school districts.
- Audits showed that schools were managing their resources fairly well.
- Immediately appealed to the Supreme Court
 - Scent argued that the Legislature had as its goal the best system possible in Kentucky.
 - recent legislative changes had a positive effect
 - “efficient” means doing the best with the dollars one is given.
 - He challenged the standing of the plaintiffs, calling the Council for Better Education a funding vehicle created solely for the purpose of suing the state using tax dollars.
 - He claimed that school districts could not sue their creators
 - that Corns’s Education Committee was simply a “dog and pony show” which violated the separation of powers doctrine.
 - Bert Combs and Debra Dawahare focused most of their effort on confirming the lower court’s conclusion

- Combs was particularly careful arguing the separation of powers issues and guiding the court to conclude the system was unconstitutional without demanding specific remedies of the legislature.

- The Kentucky Supreme Court came to its landmark decision
- activist Chief Justice, Robert F. Stephens
- Stephens decided to assign the writing of the opinion to himself and after hundreds of hours of study at the University of Kentucky, and a late night vodka and tonic, he changed the course of the opinion from one closely crafted to finance issues only, to a broad declaration that the entire system was unconstitutional.

- The heart of the *Rose* case was the court's definition of an *efficient* system of common schools.
 - The Supreme Court discussed the characteristics of an *efficient* system of schools:
 - one established and maintained by the Legislature
 - to be substantially uniform throughout the state,

- free to all Kentucky children,
 - and one that provides equal educational opportunity regardless of place of residence or economic conditions.
 - must also be sufficiently funded,
 - free of waste, duplication, mismanagement, and political influence
 - and it must have as its goal the development of seven specified capacities. These capacities enumerated a substantial set of skills that each student must learn.
- Stephens was most concerned about the court's ability to require anything of the Legislature when only the Speaker of the House and the President Pro Tempore of the Senate were actually before the court. After the fact, he advised that if he was the attorney in such a case, and even if it took a month, he'd serve every member of the legislature.
 - Reaction to the ruling was initially shocking to the Legislature
 - a brief flirtation with defying the court,
 - the legislative leaders embraced the decision
 - used its political capital to reform the public school system

- followed by a series of public proclamations where various members of the legislature began taking credit for the reform.
- But, it was the combined efforts of the Council for Better Education and its allies that persuaded the courts and gave the legislature the necessary courage to reform Kentucky's schools.
- By 1993, Kentucky was spending approximately \$5300 per pupil and its standing among southern states rose from 12th to 7th while continuing to lag about \$1000 per child behind the national average.
- By 1999, Kentucky had risen from 49th to 36th in the nation.
- After Bert Comb's death, and concerned by the erosion of education's share of the state budget the Council for Better Education reemerged in 2007, suing the state again. (*Young v Williams*: 03-CI-00055 & 03-CI-01152)
 - The Council commissioned an adequacy study
 - Claimed that funding is an “essential and minimal element” of an efficient system of schools
 - And that a standards-based system is a rational way for the court to look at the schools

- But the Council specifically asked the court to require the legislature to raise taxes
- the Franklin Circuit Court refused to “pierce the separation of powers” and rendered summary judgment for the defendants.

CONCLUSION: From *Rose*: Each child, every child in this Commonwealth must be provided with an equal opportunity to have an adequate education... The children of the poor and the children of the rich must be given the same opportunity and access to an adequate education.

The landmark Kentucky Supreme Court decision in *Rose v. Council for Better Education* is singular event that not only changed the state’s system of schools, but also started a third wave of national school finance litigation based on **equity and adequacy claims** and **education clauses in state constitutions**. Without the **political cover** provided by such a judicial ruling, combined with **strong grassroots citizen advocacy**, history strongly suggests that the legislature would have happily contented itself to under-fund a modest system of schools for the benefit of most students.

THANK YOU:

Before taking questions, via Skype, let me thank you again for this opportunity to share with an international audience, our experience with school reform in Kentucky.

Complete information on my study is available online at <http://www.kycbe.com/> Find the heading for “The Rose Case” and click on “More Reports.” There you will find my study, the listing of school finance cases, and a chronology of Council for Better Education activities.

And now, we’re ready for questions.