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Administrative Law—Scope of Review: Review Court May Not Examine the Wisdom of Local School Board Decision, But May Determine Whether Fundamental Rights Have Been Violated—Citizens Against Mandatory Bussing v. Palmason, 80 Wn.2d 445, 495 P.2d 657 (1972)

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ADMINISTRATIVE LAW—SCOPE OF REVIEW: REVIEW COURT MAY NOT EXAMINE THE WISDOM OF LOCAL SCHOOL BOARD DECISION, BUT MAY DETERMINE WHETHER FUNDAMENTAL RIGHTS HAVE BEEN VIOLATED —*Citizens Against Mandatory Bussing v. Palmason*, 80 Wn.2d 445, 495 P.2d 657 (1972).

Defendant, the Seattle School Board, attempted to implement a plan to desegregate the Seattle school system. The plan included the restructuring of school grade classifications in accordance with a "middle school" concept,[1] and mandatory reassignment of approximately 850 black and white sixth, seventh and eighth grade children from their "neighborhood schools"[2] to schools in other areas of the city. Mandatory bussing was not required, but bus transportation was to be available for those students who desired it. Plaintiffs, Citizens Against Mandatory Bussing (CAMB), obtained an injunction restraining implementation of the plan for one year. The basis for the injunction was that, although the school board did not lack the authority to adopt the plan, it had nevertheless " 'made a mistake,' an unwise policy decision."[3] The trial court also found that the board's alleged "hasty" consideration of the facts and circumstances surrounding the adoption of the mandatory reassignment plan, as well as its alleged failure to fully examine and consider possible alternative plans, amounted to "arbitrary, unreasonable and capricious" conduct.[4] On appeal, the Washington Supreme Court reversed the decision and dissolved the injunction. *Held:* In reviewing a non-judicial decision of a local school board, made within the Board's lawful scope of discretion, a court may not substitute its judgment for that of the Board, and may set aside the Board's decision only if it resulted from unreasonable, arbitrary or capricious action, or is violative of a "fundamental right."

1. The "middle school" concept would, in effect, eliminate the traditional junior high school (7th, 8th and 9th grades). A "middle school" is a grouping of the 5th, 6th, 7th and 8th grades, after which students would enter a four-year high school course. By itself, the "middle school" concept has no racial connotations, but a gradual implementation of such schools was adopted by the Seattle School Board as a means of facilitating racial desegregation in Seattle schools.

2. A "neighborhood school" is one which serves students living within definable boundaries surrounding an area contiguous to a particular school. In many cases, the school attended by a particular student would be the one which was closest to his home. Historically, the Seattle school system has adhered to the neighborhood school concept.

3. Citizens Against Mandatory Bussing v. Palmason, 80 Wn.2d 445, 448, 495 P.2d 657, 660 (1972).

4. *Id.* at 447, 495 P.2d at 659.

Parents do not have a fundamental right to either the preservation of the neighborhood school system of pupil assignment or to the selection of a particular public school which their children shall attend. *Citizens Against Mandatory Bussing v. Palmason,* 80 Wn. 2d 445, 495 P.2d 657 (1972).

The genesis of the *Palmason* dispute goes back several years. The Seattle School Board, recognizing the deterioration of racial integration in the Seattle school system,[5] began formulating and evaluating plans to desegregate Seattle schools. In 1963, the board initiated a voluntary reassignment plan, which allowed students to transfer outside of neighborhood school boundaries under certain circumstances.[6] By 1967, however, it had become apparent that the voluntary transfer program alone would not overcome racial imbalance in Seattle schools.[7] In 1968, the Board adopted several additional proposals, including a planned conversion of several junior high schools to "middle schools,"[8] and a plan specifically directed at racial imbalance in Seattle's Central Area.[9] Implementation of a broadly based desegregation plan took on a new urgency, however, following a federal suit against the School Board by a group of Central Area parents seeking

5. Brief of Appellants, at 5-8, Citizens Against Mandatory Bussing v. Palmason, 80 Wn. 2d 445, 495 P.2d 657 (1972). Copious data was presented at the trial by the school board which documented the increasing trend toward racial segregation in the Seattle school system over the past several years, due primarily to the influence of *de facto* segregation in housing. For example, in the 1970-71 school year, 80% of the regularly enrolled students of the Seattle School District were white, 12.8% were black and 7.2% were of Oriental and Indian extraction. But 40.5% of the black students attended school in the Central Area of Seattle, whereas the North Region accounted for only 16.7% of Seattle's black students (of these over 80% were transferees from the Central Area). Two Seattle high schools (Franklin and Garfield) had over 50% non-white student enrollment, and a number of elementary schools had over 60% non-white student composition. One elementary school, Coleman, was 94.5% non-white.

In 1964 only thirteen Seattle schools had a single minority enrollment of more than 25%. By 1971, this number had risen to include 25 schools. Garfield High School, for example, changed from 52.1% black enrollment in 1964 to 79.6% in 1971, and Meany junior high changed from 49.2% black to 68.5% black during the same period.

6. *Id.* at 8.

7. *Id. at* 9.

8. *Id.* at 10. Under this plan, one or more junior high schools would become racially balanced by September, 1969, and a total of at least three by September 1971. A citizen's committee was appointed to recommend detailed plans.

9. *Id.* This plan, called the "Educational Plan for the Central District," was implemented in 1970. Under this plan, the region has developed eight "satellite" preschool units serving three and four year olds, a K-2 (Kindergarten through second grade) Early Childhood Education Center, seven K-4 primary schools, two K-6 schools, one middle school and one high school. This plan did not include mandatory bussing of students outside of the Central Area.

to compel the total desegregation of all Seattle schools.[10] In October of 1970, the board held public meetings for the purpose of obtaining public input regarding school desegregation[11] and shortly thereafter adopted the "middle school" mandatory reassignment plan which became the focal point of the CAMB opposition.

Palmason presents a classic confrontation between the free exercise of administrative discretion and the necessity of independent controls to prevent abuse of such discretion. Determining the permissible scope of judicial interference, however, can be a perilous task. This is particularly true when the issue involved is as highly controversial and as emotionally charged as mandatory reassignment and the permissible scope of review is as unpredictable as in Washington.[12] The *Palmason* court found it necessary to go through four distinct steps, with each step presenting unique and yet interdependent issues, in resolving the legality of the Board's action.

First, the court examined the statutory boundaries of the School Board's authority to determine whether the action taken was properly within the Board's discretion. Citing *State ex rel. Citizens Against Mandatory Bussing v. Brooks,*[13] decided just three months prior to *Palmason,* the court decided that the action was within the Board's power. In *Brooks,* the court had concluded that the Seattle School

10. Campbell v. Seattle School District No. 1, Civil No. 9171 (W.D. Wash., filed August 28, 1970).

11. Public hearings were held on October 28, 29, and 30 and November 2, 5 and 6, 1970. The school board was not required by law to hold public hearings, because it is not subject to the Washington Administrative Procedures Act, which covers only state agencies (as opposed to local agencies, such as the Seattle School Board). *See* WASH. REV. CODE Ch. 34.04 (1967).

12. Depending upon the particular agency under review, and the nature of the action taken by the agency, the scope of judicial review in Washington can range from no review at all to trial de novo. *See, e.g.,* State *ex rel.* Sater v. Board of Pilotage Com'rs of Washington, 198 Wash. 695, 90 P.2d 238 (1939) (in general, discretionary powers of an agency not subject to review); Jow Sin Quan v. Washington State Liquor Control Bd., 69 Wn.2d 373, 418 P.2d 424 (1966) (broad spectrum of review available); WASH. REV. CODE § 18.64.200 (1963) (trial "de novo" and "as an ordinary civil action" in review of revocation of pharmacist's license).

The *Palmason* action was brought under the authority of WASH. REV. CODE Ch. 28A.88 (1969), which provides for a review de novo of decisions or orders of any school official. The Washington court, however, has held that where a power exercised by a state agency is essentially administrative, judicial review will be limited to a consideration of whether the agency acted arbitrarily, capriciously or contrary to law, even though the statute authorizes a review de novo in the superior court. *In re* Harmon, 52 Wn.2d 118, 323 P.2d 653 (1958). *See generally* Peck, *The Scope of Judicial Review of Administrative Action in Washington,* 33 WASH. L. REV. 55 (1958).

13. 80 Wn.2d 121, 492 P.2d 536 (1972).

Board's adoption of the "middle school" mandatory reassignment plan was a lawful exercise of discretion vested in the Board by statute.[14]

The second step in the court's analysis was to determine whether the action taken by the Board was primarily adjudicative or legislative, a categorization the court believed was necessary before it could define the proper scope of judicial review. A court's primary task in reviewing legislative action is the determination of whether the agency has exceeded the power or standards delegated to it by the legislature. However, review of judicial action extends to such areas as statutory construction, determining whether the agency has complied with the procedural requirements of due process, and deciding whether agency findings are supported by the evidence.[15] The *Palmason* court concluded that under any test the action of the school directors in this case was non-judicial.[16]

On the basis of this determination, the court proceeded to take the third step, the application of the traditional "unreasonableness" test,[17] and concluded that the action of the Board was neither unreasonable, arbitrary, capricious nor illegal. It is a well established administrative law principle in Washington that once reviewability has been established, a court can, as a minimum, examine the administrative action to determine if it was arrived at in an unreasonable, arbitrary, capricious or illegal manner.[18] In making this determination, however, the reviewing court must be careful to avoid scrutinizing or making judg-

14. The *Brooks* court quoted the following from Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1 (1971):

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities . . . .

Although the *Swann* case involved *de jure* segregation, as compared to the *de facto* segregation existent in Seattle, the *Brooks* court concluded that mandatory bussing was within the discretionary powers of the school board, regardless of the nature of the segregation involved.

15. 2 F. COOPER, STATE ADMINISTRATIVE LAW 669 (1965).

16. *Palmason*, 80 Wn.2d at 448 n.3, 495 P.2d at 659. Generally, if the function performed by the agency is one which courts have traditionally performed, and which the courts could have performed in the first instance, it is a judicial function. *In re* Harmon, 52 Wn.2d 118, 323 P.2d 653 (1958).

17. *See, e.g.*, Reagles v. Simpson, 72 Wn.2d 577, 434 P.2d 559 (1967); State *ex rel.* Shannon v. Sponburgh, 66 Wn.2d 135, 401 P.2d 635 (1965); 41 WASH. L. REV. 517 (1966); 38 WASH. L. REV. 249 (1963). The "unreasonable, arbitrary and capricious" test is also included as one of several permissible scope of review tests under the Washington Administrative Procedures Act, WASH. REV. CODE Ch. 34.04 (1967).

18. *See* note 17, *supra*.

ments upon the wisdom or inherent policy considerations behind such administrative decisions.[19] Judicial review of the wisdom of administrative action usurps the legislative prerogative of lawfully vested agency discretion, and as such violates the separation of powers doctrine.[20] It was clear to the court in *Palmason* that the trial court had improperly encroached upon the legislative function when it concluded that the school board had simply "made a mistake" in deciding to implement its desegregation plan. The court found that the order based upon this conclusion amounted to "nothing less than a substitution of the trial court's discretion for that of the school board, the body authorized by law to make the particular decision in question and to decide how and when to implement it."[21]

The *Palmason* decision also suggests several other respects in which the trial court exceeded the permissible scope of review. For example, the trial court found that the action of the School Board was "unreasonable and arbitrary" primarily upon the basis that the Board allegedly failed to fully consider all of the relevant facts and circumstances and failed to provide plaintiffs and the general public sufficient opportunity to be heard on the issue. Yet the evidence indicated that the School Board had conducted an exhaustive series of studies stretching back at least seven years,[22] and that a number of public meeting were

19. In *Palmason,* the court quoted from State *ex rel.* Lukens v. Spokane School Dist. No. 81, 147 Wash. 467, 474, 266 P. 189 (1928) as follows:

> In a nut shell, this whole controversy arises over a question of judgment. The petitioners before the board . . . are not in agreement with the members of the board. That disagreement of itself is not for the courts. The law has plainly vested the board of directors of school districts such as this with discretionary powers in such matters, and the directors having examined into and passed upon the matter in the exercise of their discretion, the courts have no right or power to review the conclusions reached by them as a board in the absence of a showing of abuse of discretion on their part . . . .

There are numerous other examples of the Washington Supreme Court forbidding review of administrative wisdom. *See, e.g.,* Northern Pacific Transp. Co. v. Washington Utilities and Transp. Comm., 69 Wn.2d 472, 418 P.2d 735 (1966); Town of Steilacoom v. Thompson, 69 Wn.2d 705, 419 P.2d 1046 (1957). A few cases indicate narrow exceptions to this general rule. *See e.g.,* Tungent v. State Employment Security Dept., 2 Wn. App. 574, 468 P.2d 734 (1970).

20. While it is impossible to draw precise and inviolate lines between the functions of each branch of government, it is generally recognized that constitutional restraints are overstepped where one department of government attempts to usurp powers exclusively delegated to another. State v. Fabbri, 98 Wash. 207, 213, 167 P. 133, 136 (1917). Thus, the separation of powers doctrine acts to maintain the overall integrity of exclusive governmental authority.

21. *Palmason,* 80 Wn.2d at 451, 459 P.2d at 661.

22. *Id.* at 451 n.7, 495 P.2d at 662, n.7. Twenty-six different proposals were studied by the school board prior to implementation of the current plan.

held, although by law the School Board was not required to hold public hearings at all.[23] In addition, the trial court applied the "clearly erroneous" test from the Washington Administrative Procedures Act, even though it was conceded by both sides that the School Board was not subject to the APA because it is not a *state* agency. Although the *Palmason* court did not reach this issue, it seems that the striking incompatibility of the "clearly erroneous" test with the Washington Supreme Court's definition of "arbitrary and capricious" would have amounted to still another ground for reversal in this case.[24]

The *Palmason* court held that a fourth step in its analysis of the scope of review of nonjudicial administrative decisions is that they "can be examined to determine whether they violate some fundamental right of the party challenging them."[25] It is the express application of the fundamental right test, a concept which appears in only a few Washington cases,[26] which sets the *Palmason* decision apart from most Washington administrative law decisions.

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23. *See* note 11, *supra*.

24. In *Palmason,* the trial court should have applied the "unreasonable, arbitrary and capricious" scope of review exclusively. *See* note 12, *supra*. The court has defined "arbitrary and capricious" administrative action as:

> . . . wilful and unreasoning action, without consideration and in disregard of facts or circumstances . . . [but] where there is room for two opinions, action of an administrative agency is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.

State *ex rel.* Cosmopolis Consol. School Dist. No. 99 v. Bruno, 61 Wn.2d 461, 464, 378 P.2d 691, 693 (1962). Although administrative law "scope of review" tests often tend to overlap due to varying judicial interpretations, it is nevertheless clear that in general the "clearly erroneous" test gives a court a wider scope of review than does the "unreasonable, arbitrary and capricious" test. Smith v. Hollenbeck, 48 Wn.2d 461, 294 P.2d 921 (1956); Lillions v. Gibbs, 47 Wn.2d 629, 289 P.2d 203 (1955); Deaconess Hospital v. Washington State Highway Comm'n, 66 Wn.2d 378, 403 P.2d 54 (1965); K. DAVIS, ADMINISTRATIVE LAW TEXT, § 29.02 (3d ed. 1972).

25. *Palmason,* 80 Wn.2d at 448, 449, 495 P.2d at 659.

26. The only other case in which the court has specifically referred to the "fundamental right" test of scope of review is State ex rel. DuPont-Fort Lewis School Dist. No. 7 v. Bruno, 62 Wn.2d 790, 384 P.2d 608 (1963). The court in *DuPont* postulated the validity and applicability of the "fundamental right" test upon its earlier decision in State *ex rel.* Cosmopolis School Dist. No. 99 v. Bruno, 59 Wn.2d 366, 367 P.2d 599 (1962). *Cosmopolis,* however, is weak support for the test, and is more readily explainable in terms of an inherent constitutional right to judicial review of alleged *illegal* action of a school board. Furthermore, although the court in *Cosmopolis* struck down the school-board decision in question, it did not indicate that any "fundamental right" of the plaintiffs had been violated.

Several other Washington cases refer only tangentially to the "fundamental right" scope of review, for example: Manlowe Transfer & Distributing Co. v. Department of Public Service, 18 Wn.2d 754, 140 P.2d 287 (1943) (court can review agency decision for "evidence of arbitrariness and disregard of the material rights of the parties . . ."). *Accord,* Floe v. Cedargreen Grozen Packing Corp., 37 Wn.2d 886, 226 P.2d 871 (1951).

The rationale supporting the fundamental right test is somewhat obscure. Washington precedent indicates that one function of the test is to provide for judicial review of administrative action, based upon authority inherent in the state constitution, where no statutory review is available.[27] There is also evidence that the test performs the antithetic function of preventing interference with the exercise of administrative "police power" based upon frivolous or insubstantial rights.[28] Still another case, *State ex rel. DuPont-Fort Lewis School District No. 7 v. Bruno,* suggests the possibility that a court can review the wisdom of an administrative decision if a "fundamental right" has been violated.[29] Since judicial review in *Palmason* was specifically authorized by statute,[30] however, it is probable that the fundamental right test in this instance was meant to delineate a sort of absolute "outer boundary" of administrative discretion, a protected area into which even reasonable administrative action may not intrude. In this respect, the fundamental right test applied in *Palmason* transgresses previous applications of the test.[31]

The *Palmason* court did not attempt to define "fundamental right."

27. State ex rel. Cosmopolis, School District No. 99 v. Bruno, 59 Wn.2d 366, 367 P.2d 599 (1962). The Washington Administrative Procedures Act contains a somewhat analogous provision giving the review court authority to reverse an agency decision if the "substantial rights" of the petitioners have been prejudiced because the decision was "in violation of constitutional provisions." WASH. REV. CODE § 34.04.030 (1967). Although this APA provision supports the "inherent power of review" concept of *Cosmopolis,* the APA test as applied appears to differ somewhat from the "fundamental right" test of *Palmason.* For example, applications of the APA test have emphasized specific constitutional requirements such as due process, equal protection, etc., whereas the *Palmason* court emphasized the nature of the specific right asserted, i.e., whether it was a constitutionally protected right, or a vested property right. *See* 2 F. COOPER, STATE ADMINISTRATIVE LAW 683 (1965).

28. Calvary Bible Presbyterian Church of Seattle v. Board of Regents, 72 Wn.2d 912, 436 P.2d 189 (1967), *cert. denied,* 393 U.S. 960 (1968).

29. State *ex rel.* DuPont-Fort Lewis School Dist. No. 7 v. Bruno, 62 Wn.2d 790, 384 P.2d 608 (1963). *DuPont* was interpreted by the *Palmason* court as follows: "In that case we held that a school district has no substantive right to accreditation upon meeting certain standards and that, consequently, the *propriety* of an order of the state superintendent denying accreditation . . . was not subject to review." 80 Wn.2d at 449, 495 P.2d at 659 (emphasis added).

30. *See* note 12, *supra.*

31. The court has indicated that the "essential touchstone" of the fundamental right test is the "basic nature and extent or magnitude of the right involved coupled with the patency and character of the alleged violation." *DuPont,* 62 Wn.2d at 794, 384 P.2d at 610 (1963). In *Palmason,* however, the court appears to have dispensed with the latter qualification, i.e., the patency of the alleged violation, because although it found that the action of the school board was *not* unreasonable, arbitrary, capricious or illegal, it nevertheless examined the rights asserted to determine if they met the requisite fundamentality.

Past cases, however, suggest certain parameters, primarily in the sense that they indicate that which is *not* a "fundamental right." For example, the court has found that a school district has no fundamental right to accreditation upon satisfaction of minimum statutory requirements,[32] that parents have no such right in maintaining a school building at a particular location,[33] and that a dentist has no vested right to a license to practice dentistry once a license has been granted.[34] Similarly, the court has stated that there is no vested right to receive welfare benefits,[35] or to be released early from prison due to credits for good behavior,[36] to have property assessed in any particular way,[37] or to be employed or rehired by a public agency.[38]

The supreme court found none of the rights asserted by CAMB to be fundamental. The right most vigorously asserted was the right of a parent to send his child to a neighborhood school. The respondents contended that the origin of the right stemmed from the ancient tradition of the neighborhood school concept, and that parents' continued reliance upon this school policy — for example, buying a home with specific reference to a particular school—had transformed the right into a vested property right.[39] Consequently, respondents argued, it was an abuse of discretion for the school board to summarily deprive them of this right. The *Palmason* court acknowledged only a defeasible right, voluntarily granted by school authorities, that could be taken away by school authorities.[40] The court also emphasized the fundamental principles that no one can have a vested right in

32. *DuPont*, 62 Wn.2d at 794, 384 P.2d at 610.
33. State *ex rel.* Lukens v. Spokane School Dist. No. 81, 147 Wash. 467, 266 P. 189 (1928).
34. *In re* Harmon, 52 Wn.2d 118, 323 P.2d 653 (1958).
35. Senior Citizens League v. Department of Social Services, 38 Wn.2d 142, 228 P.2d 478 (1951).
36. Butler v. Cranor, 38 Wn.2d 471, 230 P.2d 306 (1951).
37. Northwest Commercial Co. v. King County, 63 Wn.2d 639, 388 P.2d 546 (1964).
38. State *ex rel.* Ford v. King County, 47 Wn.2d 911, 290 P.2d 465 (1955).
39. Although there is no case authority in support of a fundamental or proprietary "right" to attend a neighborhood school, there is considerable authority which indicates that the neighborhood school concept may be altered or eliminated to achieve school desegregation. *See, e.g.*, Brewer v. School Bd. of Norfolk, Va., 397 F.2d 37 (4th Cir. 1968); Taylor v. Board of Educ. of the City of New Rochelle, 191 F. Supp. 181 (S.D.N.Y. 1961).
40. This "right" as delineated by the *Palmason* court appears to be a "transient" equal protection right attaching to the then uniform neighborhood school policy of the school board. When the policy is altered, the "right" is also subject to alteration, or extinguishment.

any general rule of law or policy of legislation which entitles him to insist that it remain unchanged for his benefit,[41] and that no one has a vested right to be protected against consequential injury arising from a proper exercise of rights by others.[42]

The respondent's other main contention was that the assignment of students to schools outside of their immediate neighborhood is an improper interference with parental liberty to direct the education of their children, implying that parents have a right to select the particular public school which their children shall attend. In support of this contention, the respondents cited *Pierce v. Society of Sisters,*[43] a landmark United States Supreme Court decision which held that an Oregon statute requiring parents to send their children to public schools constituted an unreasonable interference with inherent parental liberty to direct the upbringing and education of their children. In response, the *Palmason* court again found only a limited right. The court stated that a parent is free to send his child to a qualified private school, but that if he chooses to utilize the public school system, he must abide by the reasonable rules and regulations of public school authorities.[44] In this case, the court held the School Board's decision to implement its racial desegregation plan was a "reasonable regulation." Those persons affected by it are required to comply unless they can show to the Board's satisfaction some reason why they should be excused.

Confronted with an issue with such controversial ramifications, it is perhaps understandable that a trial court could not resist the temptation to explore beyond the comparatively simple administrative law

41. In support, the court cited State *ex rel.* Washington State Sportsmen's Council, Inc. v. Coe, 49 Wn.2d 849, 307 P.2d 279 (1957), and Overlake Homes, Inc. v. Seattle-First Nat'l. Bank, 57 Wn.2d 881, 360 P.2d 570 (1961).

42. The court emphasized that this rule is particularly applicable to injuries resulting from the exercise of public powers. *See* Pacific Inland Tariff Bureau v. Schaaf, 1 Wn.2d 210, 395 P.2d 781 (1939); 2 T. COOLEY, CONSTITUTIONAL LIMITATIONS 795 (8th ed. 1927).

In *Palmason,* the court applied the rule with apparent reference to alleged ill effects which would be suffered by some students compelled to participate in the mandatory reassignment program, *e.g.,* mental trauma, extra time spent on the bus, interference with extracurricular activities, etc. In another part of its decision, the *Palmason* court held that the school board was not required to find such alleged adverse effects controlling, but were under a duty to act in the best interests of the majority of students.

43. 268 U.S. 510 (1924).

44. The court also cited Wayland v. Hughes, 43 Wash. 441, 86 P. 642 (1906). This case held that a school board has the power to withdraw all privileges (from cheerleading through graduation) from students, except for the statutory rights to attend high school classes in order to induce those students to disband their high school Greek societies.

issues presented in the *Palmason* dispute. The trial court in this instance was distracted from review of alleged "unreasonable, arbitrary and capricious" action by the School Board long enough to allow its personal estimate of the inherent wisdom of the mandatory reassignment plan to show through. It is clear that the trial court issued an injunction based at least partially on this impermissible transgression. *Palmason* re-emphasizes the continued viability of the separation of powers doctrine in judicial review of discretionary administrative conduct. Although the court has left some doubt as to the nature and applicability of the "fundamental right" test,[45] it has left no doubt as to the judicial protection of the freedom of a school board to act according to the law, and according to its conscience.

45. It would seem probable, however, that the Washington court would accept as "fundamental" certain rights determined by the United States Supreme Court to be "fundamental" under the United States Constitution. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel from state to state); N.A.A.C.P. v. Button, 371 U.S. 415 (1963) (first amendment freedoms).