A Judicial Lesson In Economics

Marjorie Webster Junior College, Inc. v. Middle States Association of College and Secondary Schools

by ARNOLD A. WEINSTEIN

MARJORIE Webster Junior College is a two year college for girls.* Junior colleges are to some extent proving grounds for students who, on the basis of their high school records, were not accepted at regular four year institutions. Many of their students do not continue their studies beyond the junior college level. However, a fair proportion of them are "late bloomers" (no pun intended) whose academic performance over the two year period qualifies them for admission to a four year college. Marjorie Webster is an incorporated institution having stockholders just as one would find in any business corporation. It enjoys a good reputation. The school is, however, run frankly for profit.

Graduates of Marjorie Webster faced a serious problem when applying for admission as transfer students to any of the regular four year colleges. All too frequently admission was denied because Marjorie Webster was not accredited by the Middle States Association which was the regional accrediting agency. To overcome this problem, Marjorie Webster applied to the Association for accreditation. Despite repeated requests, Middle States refused to make any inspection which was the first step in the accreditation process. The several refusals were based on the Middle States rule which allowed accreditation only to an institution which was "a nonprofit organization with a governing board representing the public interest."

Marjorie Webster was understandably aggrieved and took to the courts to void the rule which barred it from accreditation solely because it was a school run for profit. It argued that the rule violated the due process clause of the Constitution and the Sherman Anti-Trust Act which prohibits any unreasonable restraint of trade. Whether the junior college was engaged in "trade or commerce" under that act was a crucial threshold issue. Certainly the idea of higher education being considered in the realm of trade or commerce is not one which would find ready acceptance in the academic community. However academia would regard it, the issue was resolved in favor of Marjorie Webster which concededly was engaged in a business for profit.

Decision on the existence of an unreasonable restraint of trade turned on the fact that there were no four year colleges run for profit in the area. Indeed, there is probably less than a handful of such colleges in the entire country. Prospective students of Marjorie Webster would be deterred from applying to it precisely because contemplated transfers to an accredited college at the end of two years would be chancey at the very least. With this circumstance in mind, it is clear that Marjorie Webster was hampered and restrained in its efforts to compete effectively in the course of its business. Whether the restraint was "unreasonable" under the Sherman Anti-Trust Act hinged on the reasonableness of the rule barring accreditation of a school run for profit.

It was argued on behalf of the Middle States Association that the "profit motive . . . threatened the integrity of the proprietary (run for profit) institution by diverting it from the basic responsibilities of an educa-

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*Situated in Washington, D.C.

tional institution." Essentially, this argument ran to the effect that profits and education are mutually exclusive. It is perhaps grounded on the psychoanalytical premise that money is dirty. In an opinion distinguished for its clear exposition of economic fundamentals, the court (John Lewis Smith, Jr., U. S. District Judge for the District of Columbia) demolished the Middle States argument in the following pithy language:

"Educational excellence is determined not by the method of financing but by the quality of the program. Middle States' position, moreover, ignores the alternative possibility that the profit motive might result in a more efficient use of resources, producing a better product at a lower price. Additionally, an efficiently operated proprietary institution could furnish an excellent educational curriculum whereas a badly managed nonprofit corporation might fail. Defendant's assumption that the profit motive is inconsistent with quality is not supported by the evidence and is unwarranted. There is nothing inherently evil in making a profit and nothing commendable in operating at a loss."

We are witnessing today extreme expressions of dissatisfaction with education on all levels from grade schools through the universities. Certainly the maintenance of a war which toys with the lives of young men and women is one reason for this. There are perhaps other basic reasons. Colleges and universities enjoy exemption from taxation and are beneficiaries of a policy which permits income tax deductions for educational gifts. Additionally, government funds are used directly to support them. With this kind of cushion, there is no compelling need to improve educational processes and the "business" of colleges proceeds with no particular attention required to be given to the product. On the other hand, proprietary schools receive no government support either directly or indirectly. They must maintain themselves and can do so only for so long as the education they give is good enough to cause students to beat a path to their doors. Judging from the scope and volume of the complaints made against the not for profit colleges and universities, they do not satisfy the demand for quality education even with substantial support from tax revenues. Evidently, schools operated for profit find it possible to fill the need without special help from the public treasury.

SCHALKENBACH FILM WINS SILVER AWARD

The Schalkenbach Foundation's motion picture, "Better Cities," which was previewed at the Henry George Conference in Chicago last July, won the Silver Award in the City and Urban Development category of the 1969 International Film and T. V. Festival of New York, it was announced on October 16.

The picture, a 26½ minute, 16 mm film, in color, is a hard hitting argument for property tax reform.

Appearing in it are such persons as Guy Brewer, former President of U. S. Plywood Champion Papers; Carl Madden of the U. S. Chamber of Commerce; Robert M. Hutchins, President of the Center for the Study of Democratic Institutions; John Keith of the New York Regional Plan; Roger Starr of the Citizens Housing and Planning Council; James Clarkson the popular Mayor of Southfield at the time the picture was made; C. Lowell Harriss of Columbia University; Mason Gaffney of the University of Wisconsin-Milwaukee; and Dick Netzer of New York University.