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JUDICIAL_ACTIVISM

The seeds of judicial legislation begun_ oy Supreme Court Justices Hugo Black and William 0. Douglas are now yielding weird fruit.

A Federal judge recently held unconstitutional a New Jersey law requiring public school students to stand during the Pledge of Allegianc to the American Flag. The judge did not justify this by a written opinion, but announced it orally.

In making this decision, the judge said he was extending the U.S. Supreme Court decision of 1943 which held that a student could not be compelled to recite the Pledge of Allegiance against his will. The First Amendment right of free speech was the issue in that case.

But there was no free speech issue in the present case. The issues were class discipline, courtesy, and respect for a patriotic exercise by others.

The 16-year-old girl who was the plantiff in this case, and whose picture in a low-cut semi-dress appeared with the article in the NEW YORK TIMES, accurately summed up the decision in her own words: "Everybody has the right now to do what they want. There's no manpatory-·sitting or standing -- you're free to do what you see fit. [11]

And so it is. If a teacher can't tell the pupils when to stand up and when to sit down, no wonder there is no discipline in the schools today.

A school in which "everybody has the right to do what they want" is a school where everybody's rights are violated by those who lack self-discipline, courtesy, and respect for the life, property and values of others.

In another recent example of judicial activism, a New York State Supreme Court judge issued an injunction that prohibits the U.S. Tennis Association

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and the Women's Tennis Association from excluding Richard Raskind from playing in the world's richest women's tennis tournament at Forest Hills.

Richard Raskind, who now calls himself Renee Richards, says he is a woman. He had a sex change operation in 1975. However, Renee Richards refuses to take the standard Barr Body Test which has been used since 1968 to determine whether athletes qualify for women's events in the Olympic Games.

The purpose of this test is to prevent the unfair competition that would result if men masquerading as women were permitted to enter the women's athletic events.

Renee Richards is six feet two inches tall, and obviously has a big advantage over the women tennis stars such as Tracy Austin who is only five feet tall.

When a male-female competition was staged last year by television promoters, tremendous handicaps had to be imposed on the men to make the game fair. The male players were allowed only one serve, required to hit in the singles court, and forbidden to rush the net. The female players were allowed two serves and permitted to hit in the alleys.

Apparently, the New York judge believes that he is better able to determine whether a person is really a man or a woman than the internationally-accepted physical test, and that, based on his conclusion, he then has the right to tell privately-financed athletic associations whom they must permit to compete.

When judges give speeches at public meetings, they often complain about their heavy work load, their backlog of cases, and how their salaries have not kept pace with inflation. It usually takes years for any case to get to trial.

Part of that problem could be solved if the judges would refrain from assuming such tasks as deciding whether teachers may·tell their pupils to stand up or sit down, and who must be allowed to compete in privately-financed tennis tournaments.·

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