

PATRIARCHS, POLIO AND PARTICULARISM:
The March of Dimes vs Catawba County

The National Foundation vs First National Bank, et al was a landmark case in the history of American **philanthropy**.¹ The controversy erupted in 1958 when the national headquarters of the March of Dimes ordered local chapters to send in surplus funds, and the Catawba County chapter in North Carolina refused to comply. On the surface it appeared to be a battle over money, but the fact that several fundamental principles were also involved greatly increased the determination and intensity of the protagonists. The March of Dimes and its extensive programs appeared to be in jeopardy as the case made its way **through** the federal courts from 1958 to 1961.

Among the most important of the questions involved--and the one which connected the case most directly to broad issues of American history--was the problem of the relationship between nationalism and particularism, or localism. In this case the broad problem was focused in a struggle between a national organization, the March of Dimes, and one of its component parts, the Catawba County, North Carolina.

¹. Prior to 1957 the March of Dimes was officially entitled The National Foundation for Infantile Paralysis. The First National Bank was a party in the suit only because it held some of the money which was at stake. The "landmark" designation was applied by the executive director of the March of Dimes in an interview with the writer in March 1984.

chapter. At one point late in the legal proceedings the attorney for the National Foundation pointed out that a decision in favor of the local chapter "would completely disrupt the program of the plaintiff in caring for polio victims on a national basis."²

The case also contained certain elements which ought to be of interest to historians of American philanthropy because it raised such questions as these: What is the relationship between a national philanthropic organization and its component parts? Where lies the power in such organizations, and how is it exercised? What is the legal status of all the money which is raised in annual national fund drives? How is that money to be distributed throughout the country and the society at large? And who shall make the decisions about how it is spent? Are such funds really trust funds held in trust for the American people at large and to be used for one specified purpose only? Or can a concurrent trust exist at the state or local level? Certainly these are questions of fundamental significance. Some of them are intricate legal questions which may still

2. "Brief for Appellant," p. 51. Civil Action File No. 8160. This document, which is missing from the official records, was provided by the National Foundation's attorney. The official citation for this case is 182F. Supp. 919 for the district court, and 288F. 2d 831 (1961) for the appeals court. Documents from the district court are in Civil Action File No. 389 or No. 1379, Western District of North Carolina. For the Fourth Circuit Court of Appeals the case is designated No. 8160.

evoke differing **opinions** from lawyers and judges.³ Yet they are all questions which were involved in the Catawba County case.

Less significant perhaps, but equally interesting, were certain aspects of the case which reflected other issues of the day such as the civil rights movement, the Cold War, and McCarthyism. In the wake of the Brown decision and the Southern Manifesto, conservative Southerners were even more prone than usual to be sensitive about their rights, especially when they were being "trampled" by powerful centralized organizations. The attorney for the Catawba County chapter argued that the March of Dimes "in its ivory towers undertook from afar to second-guess these experienced and devoted local chapter officials" and went even further in denouncing the National Foundation by averring that "Even the most radical of socialistic theorists propose only to take enough from the 'haves' to equalize" ⁴ Those were scathing words indeed in the aftermath of Senator Joseph McCarthy.

Because many of the arguments for both the parties in the lawsuit were based on developments which occurred

³. Neither the legal journals nor the legal historians have treated this case, although the final decision of the courts has continued to be the legal bulwark of the March of Dimes.

⁴. "Brief for the Defendant," p. 12. Civil Action File No. 389.

between 1938 and 1957, it is necessary to look briefly at a few of the background events which had direct bearing on the case. The March of Dimes had been established in 1938 and was operating for three years before the Catawba County chapter was formed in 1941.⁵ During that three year period the National Foundation was already in the business of providing funds for the treatment of polio victims from Catawba County.⁶

The local chapter apparently revolved around the activities of two or three individuals almost from its beginning until the revocation of its charter in 1958, and it was those individuals who became the most prominent of the defendants in the lawsuit. One of these was Thomas Cilley, the treasurer of the First National Bank in Hickory who handled the money and kept the books in the position of Treasurer. On the executive committee along with him was L. C. Gifford, the publisher of the area's leading newspaper, the Hickory Daily Record. Gifford's main function was to publicize the activities of the March of Dimes, especially at the time of the annual fund drives.

⁵. The history of the March of Dimes has not been written. For the battle against polio see John Rodman Paul, A History of Poliomyelitis (New Haven, 1971) and John Rowan Wilson, Margin of Safety (Garden City, NY, 1963).

⁶. "Appendix to Brief of Appellant," p. 7. Civil Action File No 8160.

The man who was at the heart of the chapter and at the center of the controversy was Dr. A. Gaither Hahn, who served as president of the chapter from 1941 to 1962. Much beloved, even revered, Hahn was a native of Hickory who had attended the local schools and the Local Lutheran college, Lenoir Rhyne, before receiving his medical degree at the University of Maryland. He served in World War One, and worked at the Trudeau Sanatorium in New York before returning to Hickory. Because he had a lung infection Hahn was semi-retired from his medical practice. That enabled him to devote large amounts of time between 1944 and 1958 to his work with the polio chapter and with polio victims.⁷

At the organizational meeting of the Catawba County chapter the organizers adopted a resolution which agreed "to engage in infantile paralysis activities in conformity with the Manual for Chapters, and the policies, rules and regulations prescribed . . . by the Board of Trustees for the National Foundation for **Infantile Paralysis inc.**"⁸ The manual contained several provisions which had a direct bearing on the controversy and ultimately served as the guide to resolving it. It specified clearly that all money and property acquired by a local chapter "are trust funds and property of the National Foundation to be expended only for the

7. Obituary in Hickory Daily Record, Oct. 11, 1962.

8. Memorandum Opinion, "p.2. Civil Action File No. 1379.

purposes provided in its Certificate of **Incorporation**" The manual made it clear that a local chapter was an "integral part" of the National **Foundation** and subject to its rules and policies. It authorized the president of the National **Foundation** to revoke the charter (Certificate of Recognition) of a local chapter if he determined that the by-laws or Manual for Chapters had been violated at the local level. If the president revoked a charter the chapter could appeal within fourteen days to the Committee on Chapters for **reinstatement**. The most important provision in the manual for **determining** the outcome of the Catawba County case was one which said flatly that "Whenever the Certificate of Recognition of a Chapter is surrendered or withdrawn, all of its funds and property, **including** its books, files, records and official Certificate of Recognition, shall be forthwith delivered to the National Foundation .

. . . "9 The Catawba County chapter had accepted these rules and operated under them from the **beginning** to the dissolution of the chapter, but it appears that some of the officers did not always know the rules.¹⁰

Three years after the formation of the Catawba County chapter, in 1944, occurred an event which provides a

⁹. Ibid., p. 3.

¹⁰• "Transcript of Testimony," esp. p. 93. Civil Action File No. 389.

strikingly ironic prelude to the bitter controversy over money that erupted in 1958. "The Miracle of Hickory," although it had taken place fourteen years earlier, was directly connected to the lawsuit and was constantly referred to in the correspondence, briefs, and judicial opinions. In 1944 the Catawba Valley was the center of one of the worst polio epidemics ever recorded. When existing medical facilities proved inadequate, the state representative of the National Foundation, Howard Crabtree, met with Gaither Hahn and the doctor who headed the local public health service and decided to establish a hospital in Catawba County. That decision was made at noon on a Wednesday. Fifty-four hours later a hospital existed--complete with patients, equipment, and doctors. It was, in one sense, a miracle. The National Foundation and the local citizens, led by the Catawba County chapter, expanded the operation, built several more buildings almost overnight, and treated hundreds of patients throughout the summer and fall. The hospital was closed in March of 1945, but not before the National Foundation had poured over six hundred thousand dollars into it and provided doctors and physical therapists who had had experience in earlier epidemics .11 A

11. _____, The Miracle of Hickory (New York, 1944). The "miracle" hospital was widely covered in the national media. Extensive photo coverage by Alfred Eisenstaedt is in Life, July 31, 1944. The Hickory Daily Record covered the story from June 1944 to March 1945.

Red Cross official on the scene "praised the project as the most **outstanding** example of cooperative effort he has ever seen."¹² The "miracle" episode left an enduring legacy for the polio fighters of Catawba County. They certainly were aware that the March of Dimes redistributes money in times of emergency from all over the country to where it is needed. More important for them was their responsibility for a large number of crippled patients who, combined with the victims of subsequent epidemics, numbered approximately three hundred when the controversy over funding erupted in 1958.¹³

During the years between the remarkable cooperative effort of 1944 and the recriminations and bitterness **which** broke out in the late 'fifties, the local and national organizations of the March of Dimes worked together effectively and harmoniously in Catawba County. Every year, usually in January, the annual fund drive took place. Gifford gave it extensive publicity in the Hickory Daily Record, the radio stations and theaters pitched in, and Hahn, Cilley, and the other members of the local chapter's executive committee worked hard and succeeded in making the Catawba County chapter the best in the state and one of the

12. Hickory Daily Record, June 30, 1944.

13. There were serious epidemics in North Carolina in 1948 and 1953. The same officials were in charge of the Catawba County chapter from 1944 to 1958.

best in the nation. Gifford's publicity always explained to the people of the area that half of the money raised was to be sent to New York and the other half was to be kept in the county to care for the local cases, most of whom had been afflicted in 1944 and 1948. When the local chapter was short on money the national headquarters responded to emergency requests for funding. March of Dimes records show that in the years between the "Miracle of Hickory" and April 1958, over a hundred thousand dollars went into Catawba County. When a state emergency fund was set up after the epidemic of 1948 the Catawba County chapter contributed about thirty-three hundred dollars to it.¹⁴

Since the lawsuit was essentially a dispute over the ownership of "surplus" funds at the local level, one naturally wonders how a surplus accumulated, especially since the county had a large number of patients and was receiving emergency grants from time to time. Apparently the extra money started accumulating after 1953. That was the last serious epidemic year, and the polio vaccination program was starting to get into high gear. The account book of the local chapter shows sharply declining expenses after 1954. The figure for group care was close to seventeen thousand

14, "Brief for Appellant," pp. 4-8 and "Appendix to Brief of Appellant," pp. 7-9. Civil Action File No. 8160.

dollars in 1954, but was less than one thousand in 1955 and less than fifteen hundred in 1957. Expenses for individual care had dropped from a high of over twenty thousand dollars in 1951 down to slightly over five thousand in 1957. Simultaneously the general prosperity of the 1950's was reflected in rising contributions to the March of Dimes. The Catawba County share from the 1955 campaign was over twenty-four thousand dollars in a year when the outlay for patient care was barely seven thousand dollars.¹⁵ Although there were still about three hundred polio victims in Catawba County, most apparently required little or no care by the late fifties. The chapter still spent large amounts on a few individual patients.

So the surplus began to pile up. Hahn, Cilley, Gifford, et al, being men of the world and good managers, did not allow it to remain idle, but started opening accounts, of ten thousand dollars each, in banks and saving and loan associations in Hickory and Newton. They were proud of their successful fund raising and frugal management and developed a decidedly proprietary attitude towards the forty thousand dollars which had accumulated by 1958. They honestly believed that it belonged to the citizens of Catawba County and should be spent there for patient care. Another belief which helps explain the stubbornness and bit

15. Account Book, Catawba County Chapter, 1954-1957.

terness of the Catawba County people when the battle over money started was that much of the monay had accumulated because of the single-handed efforts of Gaither Hahn. He was "Mr. Polio," a man who, being retired from his medical practice, spent large amounts of his time running the local March of Dimes and helping individual polio victims. One local story about the legendary Hahn is that after he wore out his Packard hauling children to the orthopedic hospitals at Asheville and Gastonia a local physician bought him a new Ford.¹⁶

The dispute between Catawba County and the national headquarters can be traced to a decision of the national board of trustees in September 1957, to call for "uncommitted" funds from the local chapters. At that time several chapters caring for severe cases had run out of money; the national reserve fund for emergency aid was depleted; and a backlog of emergency requests which could not be filled had built up at national headquarters. Accordingly the trustees called for the funds and the president, Basil O'Connor, notified the chapter chairmen of the new policy. He sent along a formula to be used in determining what funds were "uncommitted," and reminded the chairmen that "fluidity of funds has . . . been the secret of much of

16. Interview, Everett Huggins, April 11, 1984.

our success in patient aid."17 When Basil O'Connor spoke, he expected people to listen. When he issued an order he expected compliance. Along with Franklin Roosevelt, whose close friend he was, he had founded the March of Dimes and had been running it with a strong hand for twenty years. But when Basil O'Connor started issuing orders to Gaither Hahn, trouble was certainly likely, if not inevitable. For Hahn had constructed his own bailiwick, and he did not welcome any intruders. Apparently he had already been a source of concern to the national headquarters and to state March of Dimes officials for some years prior to 1957.18

Between September 1957, and May of 1958 a series of letters and meetings between national, state, and local officials brought the controversy to a head. On November 5, L.C. Gifford informed the State Representative of the Catawba County chapter's "categorical refusal to comply" with O'Connor's request for uncommitted funds.19 Late in February O'Connor once again asked Hahn to send the money to New York and reminded him that the request "must be complied with" under the terms of the charter granted to the chapter

17. O'Connor to Chapter Chairmen, Sept. 30, 1957, Catawba County File. This collection of documents is at the national headquarters of the March of Dimes in White Plains, New York.

18. Hickory Daily Record, July 15, 1953; Janet Rogan to Kathleen Allen, Oct. 27, 1959. Catawba County File.

19. O'Connor to Hahn, May 9, 1958. Catawba County File.

when it was formed. Three weeks later the regional director and the state representative of the March of Dimes went to Hickory for a meeting with Hahn, Gifford, and J. Walter Saunders, who together represented the executive committee of the local chapter. One can imagine the acrimony which resulted from the affirmation of their earlier position. Hahn and Gifford simply refused to budge.

At this point in the proceedings O'Connor was angry and frustrated. On April 1 he fired off a letter to Hahn in which he summarized his feeling by saying, "I am appalled that the Catawba County chapter now refuses to help other needy chapters"20 He reminded Hahn of how much had been sent into Catawba County in 1944, that those funds had come from "more fortunate" chapters, and that, subsequently, large amounts had been sent in to meet emergency needs. To this and all of O'Connor's requests and chiding, Gaither Hahn's response was a stony silence.

By early May of 1958 March of Dimes officials at the national, regional and state level were girding their loins for the battle which was about to be fought. In New York O'Connor and the trustees decided to revoke the charter of the Catawba County chapter. The state representative in Charlotte, John Yeatts, proposed to freeze the chapter's funds at the time of or just before the revocation.

20. Letter in Catawba County File.

Expressing the fear that Hahn might give the money to a hospital and complicate efforts to retrieve it, Yeatts said that "that group will stop at nothing to keep the funds in that county."²¹ On May 13 the March of Dimes sent a telegram to First National Bank freezing the funds. No withdrawals were to be made until the National Foundation could find someone besides Hahn and Cilley to handle the money.²²

Unfortunately for the National Foundation, Tom Cilley not only was the treasurer of the March of Dimes chapter; he was also treasurer of the bank in which the disputed funds were deposited. The legality of the freeze order would depend upon who owned the money, but that would have to be decided in the impending litigation.

During the planning for the revocation of the charter and the freezing of the funds, National Foundation officials were highly conscious of the need for good public relations. The regional director notified John Yeatts on May 8 that he was sending a public relations man to Charlotte to prepare press releases in response to an anticipated salvo from L.C. Gifford's newspaper in Hickory.²³ A day later he sent along

21. John H. Yeatts to Wallace B. Edgerton, May 7, 1958. Catawba County File.

22. Telegram in Catawba County File.

23. Telegram, Wallace B. Edgerton to John H. Yeatts, May 8, 1958. Catawba County File.

an auditor's statement revealing the large amounts of money spent during the "Miracle of Hickory" in 1944. Edgerton, the regional director, also dug out of his files "several very complimentary letters written in 1944 by various senators, mayors and governors commending the NFIP for their efforts during the epidemic" This ammunition was to be held in reserve until it was needed. Finally, Edgerton. concluded that "we are as well fixed to move on this chapter as we will ever be"24

It was Basil O'Connor who made the move in a long letter to Gaither Hahn on May 9, 1958. It had become apparent, he said, that the Catawba County officers were not willing to follow the rules of the national organization. O'Connor opined that "they cannot be a part of a national organization and not believe in or be willing to go along with its policies." Citing the Manual for Chapters., O'Connor then revoked the chapter's charter and directed Hahn to deliver it, along with the funds, files, property, and books, to John Yeatts in Charlotte.25 That letter started the battle which was to drag on through the federal courts for the following three years and to establish guidelines for the dis

24. Wallace B. Edgerton to John H. Yeatts, May 9, 1958. Catawba County File.

25. The letter is in the Catawba County File and is reprinted several times in the court records.

tribution of wealth and power in national philanthropic organizations.

The first battle to be fought after the revocation of the Catawba County charter was in the arena of public relations. Whether the National Foundation believed it could subdue the local chapter by a media campaign is not clear, but they did use this approach before deciding to go to court. Three days after O'Connor wrote the letter to Hahn revoking the charter, the National Foundation representatives in Charlotte issued a long press release. It quoted fragments of O'Connor's letter, indicated how much was being sent to neighboring counties from the National Emergency Aid Fund, and stated that over the years the March of Dimes had spent more money in North Carolina than it had received from that state. Zeroing in on the Catawba County chapter, the press release brought up the Miracle of Hickory, indicating that over six hundred thousand dollars had been sent into Catawba County in 1944 and over a hundred thousand since that time.²⁶ Unfortunately, the leading newspapers in the state printed the story before Hahn and Gifford received notice of the revocation, and that meant that Gifford was scooped by his fellow editors.

26. Press release attached to memo from Frank Chappell to Dorothy Ducas, May 16, 1958. Catawba County File.

In these initial encounters both sides employed radio messages to convey their side of the controversy. Before the Catawbans could react, the state representative and a public relations man had appeared on the six o'clock news at station WHKY in Hickory to present their side of the story.²⁷

Clearly, in terms of public relations, the National Foundation was engaged in a losing effort from the very beginning. The Greensboro Daily News reported that the Catawbans had been "ousted," and the Charlotte Observer said they had been "booted out" by O'Connor.²⁸ While major newspapers in the state devoted perhaps a column to the story, Gifford covered most of his front page with the story in the first of numerous defensive articles and editorials he published. He claimed that all the disputed funds were committed to running a weekly clinic, the work of which he explained in some detail. Quoting Tom Cilley, the treasurer, Gifford claimed that Catawba citizens had, in the previous ten years, sent seventy-five thousand more dollars to the March of Dimes than they had received in return. Gifford's story was based primarily on statements by Gaither Hahn, who charged that the large amounts sent from New York

27, Frank Chappell to Dorothy Ducas, May 15, 1958. Catawba County File.

28. Issues of May 13, 1958.

in 1944 "have been erroneously but dictatorially charged against the local chapter, although only about fifteen percent of the patients were Catawbans."²⁹ Hahn also indicated that the local chapter had carried on unofficial fund drives separate from the regular March of Dimes campaigns, but insisted that half of all the money raised in the regular **annual** campaigns had been sent to New York. It was clear from the public statements of Hahn and Gifford that they firmly believed in the justice of their cause and that they would fight to the bitter end to keep the disputed funds in Catawba County.

At that point in the controversy the National Foundation had little choice but to take legal action. Accordingly, they employed the Charlotte firm of **Robinson, Jones, and Hewson** to represent the March of Dimes. The state representative of the National Foundation had his headquarters in Charlotte and could work with the law firm, but it was clear from the outset that the local lawyers would be receiving orders and directions from Steve Ryan, the chief counsel of the National Foundation.

The lawyer who actually carried the case through the federal courts was Harry Hewson, who was then the junior partner in his firm. Hewson had graduated from the Harvard Law School in 1949, had worked for the famous and con

29. Hickory Daily Record, May 13, 1958.

troversial Judge John Parker, and indicated on one occasion that he was "born in the federal courts."³⁰ Although he had attended the University of the South, it is at least possible that the nationalistic viewpoint he displayed in his arguments may have derived in part from his attendance at the Harvard Law School.

Opposing Hewson and representing the Catawba County defendants in the case was a prominent Hickory attorney named Young M. Smith. Smith, who volunteered his services because he believed strongly in the cause of the local group, was an eastern North Carolinian who had earned his undergraduate and law degrees at the University of North Carolina in Chapel Hill. He practiced first in Asheville, where he was actively involved in the U.S. senatorial campaign of the maverick politician Richard Reynolds. After Reynolds was elected, Smith had served seven years in Washington as lawyer in the Justice Department. Then he had moved to Hickory and had become connected with the local business establishment, especially Shuford Mills. He had led the cause of the "wets" in the fierce battle to legalize lidquor in Catawba County in 1949. Over the years he had practiced extensively in the federal courts.³¹ At the time

³⁰. Interview, July 9, 1990. Hewson admitted to the writer only that he had been to law school "up North."

³¹, Interview, Young M. Smith, Sr., May 2, 1984.

of the case, and even twenty-five years afterward, Young Smith believed that the disputed funds belonged, by both law and justice, to Catawba County and he was confident that he could defeat Harry Hewson and the March of Dimes.

Hewson's first step was to attempt a compromise. He wanted to divide the disputed funds between the state and national organizations, compliment the Catawba County chapter for doing a good job, and continue the chapter under Hahn's leadership. But the National Foundation was in no mood to compromise. One official pointed out that a compromise would not settle the "long range problem" and urged "that we ask Mr. Hewson to abandon this line . . . and . . . seek immediately through court action the books and records of the Catawba County Chapter."³² "The time to negotiate is long since past, " he added.

After the compromise efforts failed, Hewson then adopted a tougher approach. On June 19, 1958 he "demanded," in a letter to Gaither Hahn and Tom Cilley, that "all of the funds, property, books, files, records, and official certificate of recognition" be turned over to the National Foundation. Tangible property in the possession of patients was excluded, and patient care was not to be interrupted. Expressing the intention of the March of Dimes to from a new

³². George P. Voss to Wallace B. Edgerton, June 10, 1958. Catawba County File.

chapter, Hewson reminded the recalcitrant Catawbans that the disputed funds were still frozen.³³

Smith's first move was to advise the preplexed president of that First National Bank on the question of the "frozen" funds. The accounts and certificates of deposit were in the name of Tom Cilley, who worked at the bank but refused to turn them over to representatives of the National Foundation because he was on the side of Hahn and Gifford. The National Foundation had instructed the bank to honor checks signed by two men from Newton,³⁴ but the bank refused to do so. Smith informed the president of the bank that "the local responsible officials do not recognize the National Foundation's right to the money."³⁵ Smith pointed out that no new chapter of the March of dimes had been formed and that the two men from Newton were "simply agents" of the National Foundation. Caught in the middle of a seething controversy, the bank continued to cash the checks of the old polio chapter and disregarded the orders sent down from New York.³⁶ When the state representative of the National Foundation walked into Tom Cilley's office and asked him for

33. Letter in Catawba County File.

34. H.E. White to First National Bank, July 7, 1958. Catawba County File.

35. Young Smith to First National Bank, July 17, 1958. Civil Action File No. 389.

36, "Complaint," item 9. Civil Action File No. 389.

the bills of the local chapter, Cilley told him that he and Hahn, on the advice of Young Smith, had paid over three thousand dollars worth of bills and that nothing was left to be paid. When word of this reached Harry Hewson in Charlotte he "seemed shaken."³⁷

The case entered the federal court system when Hewson filed a complaint in the district court for Western North Carolina on July 29, 1958. Named as defendants in the case along with the First National Bank were three savings and loan associations in Catawba County; Hahn, Gifford, and Cilley; and four other members of the executive committee of the defunct March of Dimes chapter. The complaint indicated the nature of the controversy and established that it belonged in the federal courts because it involved diversity of citizenship. Citing the Manual for Chapters of the March of Dimes to establish ownership of the funds, he alleged that the defendants had spent money of the National Foundation after the revocation of the charter. After complaining that Tom Cilley refused to endorse any documents turning over the money, Hewson asked for an injunction requiring that property and funds be handed over to the National Foundation and that former chapter officials refrain from fur

37. John H. Yeatts to Wallace B. Edgerton, July 22, 1958. Catawba County File.

ther interference with the work of the March of Dimes.³⁸

it took Young Smith six weeks to file his response, but when it came he took a firm stance which he was to maintain for the next two and a half years. At the outset he admitted that the defendants had received the directives from Basil O'Connor to turn over the money and that they had refused to obey the requests of state and national officials.³⁹ He asserted that all the disputed assets were being held for Catawba County polio victims and cited various March of Dimes publications stating that "one half of the money that is raised by the March of Dimes remains in the county."⁴⁰ Smith also insisted that the defendants "have, hold, or control no money or property belonging to the plaintiff." After pointing out that the National Foundation was expanding its activities to cover other fields besides infantile paralysis, Smith asked that the plaintiff's injunction be denied, that the National Foundation recover nothing, and that the suit be dismissed. Then, taking the offensive, the Catawba County lawyer asked for an injunction against recovery of the funds, or spending any of

38. "Complaint," filed July 29, 1958. Civil Action File No. 389.

³⁹. "Answer," filed Sept. 16, 1958. Civil Action File No. 389.

40 Ibid p 5

the contested money for any purpose except the treatment of polio patients.

The next stage in the proceedings was a trial held in Asheville on August 10, 1959. No jury was involved. Hewson and Smith appeared before Judge Wilson Warlick with their witnesses, presenting evidence, examining, and crossexamining. In his opening statement Hewson proposed to show in his evidence that the Catawba County chapter was merely an agent of the National Foundation and read the critical passage from the Manual for Chapters which said plainly that all funds and property received by a chapter belong to the National Foundat.ion.⁴¹

After his opening statement Hewson introduced Steve Ryan, the chief counsel of the National Foundation. Ryan explained the decision to call in the surplus funds and indicated that the same practice had been followed as early as 1949. Then Hewson and Ryan read into the record in great detail every check for supplemental aid which had been sent to Catawba County from 1945 to 1954. Hewson reminded Judge Warlick that the total amount of those cheks was over a hundred thousand dollars.⁴² Hewson also established in his examination of Ryan that the patient care costs in Catawba

41. "Transcript of Testimony," pp. 4, 9. Civil Action File No. 389.

42. Ibid., pp. 11-19.

County were far less than the money they kept from the annual fund drives. Clearly what Hewson was doing at this stage of the trial was demonstrating the redistributive function of the March of Dimes, and showing that the defendants should be well aware of how the organization worked.

The main arguments of the opposing sides were not discussed in the trial but were contained in various briefs filed by Hewson and Smith throughout 1959. Hewson's main arguments in his district court brief were as follows: (1) the defendants had no legal authority over the property of the March of Dimes; (2) they "wrongfully refused" to turn over funds to needy chapters; (3) their actions would undermine the work of the March of Dimes; and (4) the National Foundation always covered the financial obligations of chapters when they acted according to the rules.⁴³ Hewson also attempted to establish the fact that the local chapter was an agent of the National Foundation.⁴⁴ When it dawned on Hewson that he had omitted from his argument the important passage pertaining to ownership of funds in the Manual for Chapters he filed a supplemental trial brief.⁴⁵

43. "Trial Brief," pp. 1-6. Civil Action File No. 389.

44. Ibid. Hewson also cited sections of the American Law Institute Re-statement of Law, Agency, 2nd.

45. "Supplemental Trial Brief," undated. Civil Action File No. 389.

Young Smith never finished his brief until two months after the trial, but it is a document showing evidence of considerable effort. In essence, he had two arguments: (1) no uncommitted funds existed, and (2) "The funds here sought by plaintiff are trust funds, publicly contributed for a special purpose, and no one has a right to appropriate or use them otherwise."⁴⁶ To support his contention that the defendants were trustees Smith cited the American Law Review four times, five North Carolina decisions, and the relevant portion of the state's general statutes.⁴⁷

For purposes of connecting this case to the broad historical issue of nation versus locality, Smith's district court brief is the most revealing document of all. His charge that the National Foundation operated in an ivory tower has already been cited in the introductory remarks. In attempting to prove that no "surplus" funds existed in Catawba County, Smith cited the extensive experience of his clients, including the "Miracle of Hickory" and subsequent epidemics. "They were without question the best judges of the needs, present and prospective, of Catawba's polio vic-

46, "Trial Brief," Index and p. 14. Civil Action File No. 389.

47. The citations were: Avery v. Steward, 136 N.C. 426; Benevolent Society v. Orrell, 195 N.C. 405; Church v. Trustees, 158 N.C. 119; Creech v. Creech, 222 N.C. 656; Rousseau v. Call 169 N.C. 173; N.C. GS, 36-23.1; 163 A.L.R. 334; 5 A.L.R. 834; 23 A.L.R., 2nd 1209, 1217-18; 157 A.L.R. 903, 906-909.

tims. They were by far the best qualified to determine whether or not there were any surplus or uncommitted funds in their treasury."⁴⁸ Smith then launched into a scathing, half-satirical attack on the "purely mechanical" formula devised by the wise men in New York "to determine how many people in Catawba County, North Carolina, would be stricken by polio, how sick they would be and how long they would remain so." Finally, wielding an even heavier ax to the framework of the National Foundation, Smith raised the specter of socialism. Even socialists, he contended, "do not admittedly propose to break one to enrich another." The Catawba County lawyer then concluded his brief by asking Judge Warlick to find that no surplus funds existed; that all the disputed money was needed in Catawba County and should remain there; that, in effect, a trust fund existed; and that the court would act as the trustee, supervising the expenditure of the money.⁴⁹

As soon as Harry Hewson saw Smith's brief he immediately wrote Judge Warlick to point out the flaws in the defendants' case.⁵⁰ He maintained that Smith's claim that the defendants were trustees and that they were obligated to

⁴⁸. "Trial Brief," p. 11. Civil Action File No. 389.

⁴⁹. Ibid. pp. 11, 18-19.

⁵⁰. Harry Hewson to Judge Wilson Warlick, Nov. 12, 1959. Civil Action File No. 389.

spend the disputed money only in Catawba County had been completely undermined by the witnesses at the trial. Saunders had testified that he was willing to turn over part of the money⁵¹ and Cilley had voted at various times to send money to both the National headquarters and to the North Carolina Epidemic Fund Committee.⁵² The Catawba County chapter had paid bills for children from other counties and even from another state.⁵³ But the most revealing part of Hewson's plea to Warlick came when he raised directly the question of local versus national control. He noted that Gifford had "put his finger on the real difficulty between the parties" when he testified⁵⁴ that he would have sent the disputed money to New York if he had believed there was a national emergency. His fundamental assumption was that local officials could make decisions affecting the welfare of the whole country if their interpretation of conditions differed from that of the national officers. This was indeed "the real difficulty between the parties," and it pointed up the fundamental significance of the Catawba County case.

51. "Transcript of Testimony," p. 66. Civil Action File No. 389.

52. Ibid., p. 89.

53. Ibid., pp. 87, 98.

54. Ibid., p. 115.

Judge Warlick mulled over the case for seven months after the trial before writing his opinion.⁵⁵ He may have agonized some about it, since he had helped raise Harry Hewson⁵⁶ and was a Catawba county neighbor of Young Smith and the defendants. From the standpoint of equity and fairness there was much to be said for the defendants. Public opinion was overwhelmingly on their side. But the law appeared to be in favor of the plaintiffs. After a lengthy history of the dispute Warlick first threw out the legal arguments of the attorneys by noting that "I am not cited to any cases having a direct bearing thereon."⁵⁷ Hewson and Smith had seen it as a question of trusts and agency, but to Judge Warlick it was a case involving a contract. In a sentence reminiscent of John Marshall he stated that "Courts are not at liberty to re-write contracts" ⁵⁸ Warlick went no further than the charter of the chapter, which he saw as a contract. To him it was perfectly clear from the charter that the National Foundation owned the money. Accordingly he ordered the savings institutions to turn over

55. "Memorandum Opinion," filed April 13, 1960. Civil Action File No. 1379.

56. "Transcript of Testimony," p. 43. Civil Action File No. 389.

57. "Memorandum Opinion," p. 12. Civil Action File No. 1379.

58. Ibid.

the money to the National Foundation and enjoined the defendants from interfering with or claiming any right to it⁵⁹ So far Hewson had won. But Judge Warlick then proceeded to place several restrictions on the use of the funds. They could not be spent on any of the expanded activities of the foundation. Warlick retained jurisdiction over the funds, required that they be put in a special account to care for the Catawba County polio victims, and ordered that the National Foundation report to him every six months on disbursements from the account.⁶⁰ Those provisions were in line with the arguments of Young Smith.

Between the time Judge Warlick issued his opinion and the time he issued his decree implementing the opinion, Harry Hewson tried in vain to keep the judge from placing restrictions on the National Foundation. Once again he argued that there was no trust relationship between the local chapter and the citizens of Catawba County which required the expenditure of the surplus funds in that county. And again Hewson focused on the effects such an opinion and decree would have on a national organization:

. . . this court ought not to undertake to interfere in the execution of its duties as trustee of its funds and assets as such participation by the court in the activities of the

59. Ibid., p. 13.

60, Ibid., p. 14.

plaintiff is not a proper **function** of the court, would tend to destroy the uniformity of the plaintiff's program in the United States and make it impossible for the plaintiff to administer its program on a national basis"61 Warlick was unmoved by Hewson's pleas. When he issued his final decree it was the same as the opinion except that he eliminated one typographical error and allowed the National Foundation to report to him once a year instead of every six months.62 Warlick pointed out that Catawba County still had three hundred polio patients, noticed that all the money in dispute had been raised there, and ordered that local cases be cared for before the money could be spent "elsewhere in the United States."63

If the case had ended in the federal district court for western North Carolina it never would have achieved landmark status. But it was not to end there. As soon as O'Connor and the other officials of the National Foundation read Warliok's **opinion** they decided that his decision had to be appealed. Too much was at stake to accept Warlick's decision. Here was a district court judge telling the March of

61. "Motion to Amend and Make Additional Findings," April 19, 1960. Civil Action File No. 389.

62. "Decree," June 7, 1960; Warlick to Hewson, April 22, 1960; Warlick to Annie Aderholdt, April 22, 1960. All in Civil Action File No. 1379.

63, "Decree," p. 1.

Dimes how to spend its money. He had said, in effect, yes the money belongs to the national organization, but this county has a particular interest in it and it has to be spent there if the local officials say that it is needed. Furthermore, the judge had said that he would be looking over O'Connor's shoulder to be sure that he followed the directive issued to him by a federal court.

Warlick's decree clearly had major implications for a national organization like the March of Dimes. It would be impossible to establish and administer uniform national policies and programs if individual chapter leaders like Gaither Hahn could defy the national organization by formulating their own policies and refusing to obey the established rules. Considering the importance of the case, and acting on orders from New York, Hewson filed an appeal to the Fourth Circuit Court of Appeals within one week after the appearance of Warlick's decree.⁶⁴

Since the proceedings, issues, and arguments in the Fourth Circuit Court of Appeals were essentially the same as they were in the district court, they will be treated briefly here. Young Smith's brief for the circuit court was much shorter than the earlier one, but Hewson went all out, submitting a fifty-two page brief and an eighty-five page

64. "Notice of Appeal," June 16, 1960. Civil Action File No. 1379.

appendix.⁶⁵ In October 1960, Hewson and Smith argued the case before three judges in Greenville, South Carolina, and the court ruled in March of 1961.⁶⁵

One of the three judges on the Court of Appeals, and the author of its opinion, was Clement Haynsworth, who is primarily remembered in American History for the rejection of his nomination by President Nixon to a seat on the Supreme Court. It was as clear to Haynsworth as it had been to Warlick that the National Foundation owned the disputed funds. Like Warlick, Haynsworth referred to the charter of the chapter and the Manual for Chapters. The main difference between the circuit court and the district court was on the trust question. While Warlick had assumed that a special form of trust existed, Haynsworth's view was that "the circumstances do not disclose the imposition of any trust." The defendants "must have known" that the initial distribution of funds from the annual drives was an administrative device which was not final and irrevocable. Neither did Haynsworth accept Young Smith's inferences that the National Foundation had deceitfully misled the officials of

65, "Appellees' Brief and Appendix Thereto"; "Brief for Appellant"; "Appendix to Brief of Appellant"; all, undated, are in Civil Action File No. 8160.

66. Years later all Smith could remember of the proceedings was that he drove a borrowed red Volkswagen "beetle" to the courthouse, running backwards when the reverse gear in the vehicle got stuck. Interview, May 2, 1984.

the Catawba County chapter about the national distribution of money contributed to the March of Dimes. In view of these findings the circuit court ordered that "The decree of the District Court will be affirmed insofar as it directs that these funds be turned over to the National Foundation. It should be modified, however, to eliminate the restrictive conditions imposed upon the use of the funds and the requirement that periodic reports disclosing their application be filed with the court.⁶⁷

Although the National Foundation would have gone to the Supreme Court, the Catawbans surrendered after Haynsworth's decision. Hewson had won his battle with Young Smith. The national organization had triumphed over the local one, and had the precedent it needed for similar future disputes. But the spirit of localism remained, and still remains. Hahn died shortly after the dispute ended. The atmosphere was bitter, making it exceedingly difficult to restore the local chapter of the March of Dimes.⁶⁸ A visitor to Hickory thirty years later could find on a side street a small office displaying in the window the placard of an independent organization called "The Hickory League for Crippled and Polio." In that little room, amid the canes, wheelchairs, and crutches, one could still feel the spirit of southern

67. 288 F. 2d 831 (1961). Quotes from pp. 6, 7, 11.

68. For this battle see the Catawba County File, 1961-1965.

nationalism, local autonomy, and the lingering ghost of Dr.
Gaither Hahn.