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Mobley, Phillip Anthony, Ed.D.

The University of North Carolina at Greensboro, 1987

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THE LEGAL IMPACT OF CONSERVATIVE NEW RIGHT INFLUENCES ON PUBLIC SCHOOL CURRICULUM

by

Phillip Anthony Mobley

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

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1987

Approved by

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APPROVAL PAGE

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In recent years, a conservative, political, religious movement known as the New Right has emerged across the nation. While endeavoring to influence many societal issues, public schools have been particularly impacted due to the involvement of children, propinquity, and the relationship of politics and education. Many conservative organizations and individuals are distressed by what they perceive to be a movement toward a Godless system of public education, characterized as secular humanism. Close examination reveals that this abreact conservative movement differs from conservative pressures in the past. The New Right pressures have resulted in the growth of private schools and home schooling, as well as an assault on public educational practices, theories, and materials.

A review of the professional literature has been conducted in order to trace the historical development of conservative influences and chart the emergence of the current New Right leadership in America. Assertions that public schools have become bastions of secular humanism have been explored in depth.

The scope of the study has been limited to an examination of conservative pressures exerted by the New Right in the following areas: (1) secular humanism, (2) censorship

of curricular materials and books, (3) the evolution-creation controversy, and (4) religious practices such as prayer, meditation, and religious meetings in the public schools. Based upon an analysis of the data, the following conclusions are presented:

1. Secular humanism is a catch phrase by New Right critics of public education to denote all categories of complaints.
2. The controversy concerning removal of curricular materials will continue due to conflicting appellate court rulings and increasing censorship efforts.
3. Balanced treatment statutes and the teaching of creationism as science have not passed constitutional muster.
4. Religious practices such as meditation and use of school facilities have met with conflicting rulings in the appellate courts.

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CHAPTER I

INTRODUCTION

Overview

Throughout the history of civilization, the passions aroused by religious conviction are unequaled. The centuries have been marred by struggles between citizens and their governments over religion. In an effort to avoid this problem, the founding fathers sought to divide church from state. "In writing the first amendment," contends Glen Epley, "they created a new dilemma: how may government avoid promoting religion while allowing individuals to practice freely their religion?"[1]

Since the proper height of the wall of separation between church and state is controversial, educators now teeter precariously on top of the wall, often not cognizant of how to maintain a proper balance. Correct positioning is a dynamic, rather than a static concept, due to the ever-changing societal forces affecting public education.

Almost two centuries ago, the great German philosopher, Georg Wilhelm Hegel, adeptly noted that the world process

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[1]Glen B. Epley, "Recent Litigation Concerning Separation of Church and State," paper presented at the annual meeting of the National Organization on Legal Problems of Education in Williamsburg, Va., 7 December 1984, p. 3.

involved three distinct stages known as thesis, antithesis and synthesis. This concept of dialectic idealism constantly pitted new ideas, the antithesis, against the status quo, thesis, resulting in movement from the original position to a new synthesis.[2] "Let someone take a fixed position," summarizes Joseph Bryson, "and there will be the inevitable opposition to it--a thesis-antithesis producing synthesis is in action--the dilemma of man unfolds."[3]

Societal and individual attitudes are thus in a dynamic state of flux. The more liberal political philosophy of the 1960's has given way to a more conservative era. The Vietnam War, failure of welfare programs, increased government spending, unrest on college campuses, Watergate, and other events lessened the confidence people had in government. Simultaneously, parents became critical of new approaches in education such as open classrooms, values clarification, team teaching, new math, and ungraded classes.

The result has been the emergence of many conservative organizations such as the Moral Majority, Educational Research Analysts Inc., Eagle Forum, Heritage Foundation, Creation Science Research Center and the Christophers. These organizations have wielded increasing political clout affecting many areas of life in the United States.

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[2]Joseph E. Bryson, "The Supreme Court and Social Change," speech at Guilford College, 20 June 1984.

[3]Ibid.

The conservative impact has been particularly evident in the schools due to the following factors: (1) the involvement of children, (2) geographic propinquity, and (3) the relationship of politics and education. Each of these will be briefly delineated.

In spite of the widespread and valid media attention given to child abuse, child neglect, teenage suicide, and runaways, there remains a basic legitimate concern by a majority of parents for their children. Students typically spend over one thousand hours a year in school, thus, educators have the potential to have significant influence on the knowledge, attitudes and behaviors of children. Parents become concerned if they have a conviction that the teachings of home and school are dissimilar. Mel and Norma Gabler, founders of Educational Research Analysts Inc., assert that "parents are paying for destructive indoctrination of their children."[4] Concern leads to action which can result in conflict between home and school. Many educators can attest to the fact that while apathy reigns supreme in some homes, most parents are concerned about the education of their children.

A second reason for conservative influences on public schools involves propinquity. There are many schools in each

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[4]Mel Gabler and Norma Gabler, "Mind Control Through Textbooks," Phi Delta Kappan 64 (October 1982):96.

of the sixteen thousand school districts across the nation. Schools are located in most every town and neighborhood and thus, due to geographic proximity, have become the nearest target for citizens who have become disenchanted with government or education. The citizen who is frustrated by national or state political events will probably not fly to the national or state capital to protest. He is far more likely to march into the local school or attend the next school board meeting in order to vent his frustrations.

A third reason that the conservative impact has been evident in the schools revolves around the reality that the educational system is necessarily intertwined with the political process. Historians disagree over why the founding fathers remained curiously silent on the issue of education. The tenth amendment to the Constitution specifies that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[5] The federal government, however, tremendously affects education each year as a result of a Constitutional provision which permits the Congress to tax and spend monies for the general welfare, including education.[6] The federal legislative branch has also exerted control through the passage of legislaton such as

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[5]United States Constitution, Amendment X.

[6]Ibid., Article I, Section 8.

the National Defense Education Act of 1958 and the Elementary and Secondary Education Act of 1965. The federal judiciary has had a profound influence due to the plethora of court rulings that will be delineated in Chapters III and IV. The executive branch has exerted control through presidential persuasion and the Office of Education.

Basic authority over educational matters is a state responsibility guided by constitutional provisions which grant the state legislatures plenary control over educational matters. Laws may be passed governing education so long as they do not violate either the state or federal constitution or federal statutory provisions. State legislatures have typically been responsible for creating school districts, controlling teacher certification, raising and distributing revenues for educational purposes, prescribing curriculum, and regulating other aspects of public school operations. This has often been accomplished through the establishment of an education department headed by a state school executive officer, frequently designated as superintendent.

The actual daily operation of the schools, except in Hawaii, is delegated to quasi-legislative bodies known as school boards. Members are most often elected by the citizenry in the school distsrict. These boards possess both specified and implied powers and thus have tremendous influence.

The local school therefore is impacted by the federal, state, and local governments. Since each level of government is operated in our democratic society by the will of the people through the political process, it can be assumed that the local school is not far removed from the political process and will thus be affected by the political changes of direction in our nation's history. In an era of conservative momentum, public education has been similarly affected by the change in the political climate.

Multitudes of religiously and politically conservative organizations are distressed by what they perceive to be a movement toward an unpatriotic and Godless system of public education. They recommend adherence to traditional Judeo-Christian values in the schools. These conservative groups assert that court decisions eliminating prayer and Bible reading from the public schools, along with an increase in secularism and a decrease in patriotism, "rob America of what they believe to be its once secure underpinnings leading it into a potentially dangerous arena of moral relativity created by a more questioning attitude toward tradition and authority."[7]

It has been argued by some that the current conservative pressures are nothing new since politics and religion have

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[7]Ronald L. Hollowell, "A Critical Analysis Concerning the Content, Insightfulness and Implications of Selected new Right Criticism of Secular Humanism and Its Purported Ascendancy in Public Education" (Ed.D. dissertation, Indiana University, 1984), p. 3.

always commingled in America. Flo Conway and Jim Siegelman deny that "the current expression is only the latest in a long tradition of religion summoning moral values to the forefront of national debate."[8] Close examination does indicate differences with past conservative pressures. "What is new," contend William L. Pharis and John S. Martin, "is the New Right's attempt to pit the three basic social institutions--home, school, and church--against one another."[9] It is not only the opponents of new conservative groups who assert that the current movement is somehow different. Paul Weyrich, director of the Committee for the Survival of a Free Congress and a powerful leader of the conservative movement, asserts, "We are different from previous generations of conservatives. We are no longer working to preserve the status quo. We are radicals, working to overturn the present power structure in this country."[10] These conservative pressures are not part of the normal conservative swings that have affected education in the past. "It is the abreact

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[8]Flo Conway and Jim Siegelman, Holy Terror: The Fundamentalist War on America's Freedoms in Religion, Politics and Our Private Lives (Garden City, N.Y.: Doubleday and Company, Inc., 1982), p. 160.

[9]William L. Pharis and John S. Martin, "The New Right Comes to School But How New Is It?", Principal 61 (January 1982):32.

[10]Thomas J. McIntyre, The Fear Brokers (Boston, Mass.: Beacon Press, 1979), p. 67.

conservative--the New Right--the religious fundamentalist New Right-Populists," asserts Joseph Bryson, "that are seeking a transformation of the public school curriculum which reflect their religious-political views."[11]

In order to be unbiased, it must be noted that public schools are surrounded by a myriad of both liberal and conservative political pressures. Liberal groups may assert that the public schools are sexist or racist. Conservative organizations may contend that the educational system is Godless or humanist. A movement too far in one direction by an educator will assuredly bring a response from a group of the opposite philosophical persuasion. While this study will focus exclusively on the conservative influences of the New Right, it must be acknowledged that many pressures, both liberal and conservative, influence public schools.

The agenda of the New Right aims not only at education, but also at abortion, pornography, the rights of women, sexual attitudes and behaviors, and many other issues concerning the larger society. The scope of this study, however, will be on the conservative pressures exerted by the New Right on curriculum in public schools. Specifically, the areas for legal investigation are: (1) secular humanism, (2) censorship

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[11] Joseph E. Bryson, "Conservative Pressures on Curriculum," School Law Update, Topeka, Kansas: National Organization for Legal Problems of Education, 1982.

of curricular materials and books, (3) the evolution-creation controversy, and (4) religious practices such as prayer, meditation, and religious meetings in the public schools.

Statement of the Problem

Though the public school system has been a remarkable American success story, it is presently under attack because its ability to educate students is now suspect. The philosophical agendas of the New Right and public education are reaching an ever widening chasm as represented by remarks of leaders of each group.

Reverend Greg Dixon contends that "declining test scores, vandalism, drugs, crime, and violence have been regular fare for public school students for more than two decades."[12] Dixon, one time national secretary of the Moral Majority, asserts that elitist educators are brainwashing students in order to strip them of traditional American values.

Tim LaHaye observed that "when God was expelled from the schools, and moral relativism began to reign supreme, one could perceive the beginning of the chaos that pervades today's public education."[13] The Gablers are less diplomatic in asserting that "What was done suddenly through government

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[12]Greg Dixon, "The Deliberate Saborage of Public Education by Liberal Elitists," Phi Delta Kappan 64 (October 1982): 97.

[13]Tim LaHaye, The Battle for the Mind (Old Tappan, N.J.: Fleming H. Revell Company, 1980), p. 43.

by force by Hitler has been done gradually in the United States . . . through schools."[14] They contend that books that teach, promote or uphold basic moral values have gradually been eliminated.

In a scathing attack in A Time for Anger, Frankie Schaeffer denounced public schools for turning "out generation after generation of baffled, rootless, religiously neutered neo-barbarians, who have been taught that there are no moral absolutes."[15] As a result, he maintains that students "have been delivered by that system into the hands of such persons as Planned Parenthood's high priests and instructed in their pitiful religion of 'do your own thing.'"[16]

Reverend Bill Bennett, pastor of First Baptist Church of Fort Smith, Arkansas, asserts by controlling textbooks and teacher education programs, schools have been the primary culprit in advancing secular humanism in our society.[17] The remarks by Dixon, LaHaye, the Gablers, Schaeffer and Bennett indicate the extent and depth of anti-school sentiments by the New Right.

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[14]Gabler, "Mind Control," p. 96.

[15]Frankie Schaeffer, A Time for Anger: The Myth of Neutrality (Westchester, Ill.: Crossway Books, 1982), p. 152.

[16]Ibid.

[17]Bill Bennett, "Secular Humanism: America's Most Dangerous Religion," Humanist 42 (March-April 1982):44.

Anti-conservative voices, such as those of Conway and Siegelman, are especially adamant in attacking the New Right political base and motives as indicated by the following:

> Instead, it is the exploitation of religion as the vehicle for a larger social and political movement, a drive for power, not only at the national level, but in every domain of public concern, in the most intimate areas of our private lives, and in the volatile arena of world affairs. It is this broad program of intimidation, manipulation and control in the name of religion that we call "Holy Terror."[18]

Many religious leaders in the nation do not agree with the tactics of the New Right. The most well known evangelist of the twentieth century, Dr. Billy Graham, has disclaimed membership in the conservative right wing by saying: "I don't wish to be identified with them. . . . Evangelists can't be closely identified with any particular party or person. . . . It would disturb me if there was a wedding between the religious fundamentalists and the political right."[19]

A large segment of the population neither views the schools as bastions of secular humanism, nor the fundamentalist as a danger to schools or society. Nevertheless, school board members, administrators, and teachers are caught in the midst of this philosophical whirlpool. "Either they've offended one by refusing to excuse a student from secular

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[18]Conway and Siegelman, Holy Terror, p. 4.

[19]Samuel S. Hill and Dennis E. Owen, The New Religious Political Right in America (Nashville, Tenn.: Abingdon, 1982), p. 16.

activity that contradicts his beliefs," states McCarthy, "or they've outraged one by altering the curriculum to accommodate space for religious values."[20] The educator must decide whether to be accused of a sin of commission or omission. This is a serious problem facing educational personnel and one which will be addressed in Chapter V with the delineation of specific recommendations.

The problem began when the solid base of support for American public education began to erode under the influence of societal pressures and educational innovation. Declining standardized test scores, high drop-out rates, drugs, violence, vandalism, a failure to teach absolute values, and the removal of formal religious practices from the schools are reasons frequently cited by school opponents for their loss of faith in public schools. The result has been a phenomenal growth in conservative pressure on the schools. Whereas some parents chose to remain in the public schools, others opted for private schools or home school instruction. Evidence suggests that the number of Christian private schools has more than quintupled in the last two decades.[21] Dr. Jerry Falwell reports that the establishment of three new Christian schools each day has led to a total of over eighteen thousand

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[20]McCarthy and Cambron, Public School Law, p. 33.

[21]Joe L. Kincholoe, "The New Right Comes to School: Educatio nand the Power of the Pious," Principal 61 (January 1982):35.

fundamentalist Christian schools nationwide.[22] The rapid growth of these schools results in declining student populations and hence lower revenues for the public school sector. Concomitant with the private school movement is debate over tuition tax credits, vouchers, shared time programs and other issues involving government assistance and regulation of private school curriculum, facilities and personnel.

Those members of the New Right that have remained in public schools, in lieu of private alternatives, often challenge the teaching of evolution, attitudinal testing, peer counseling, role playing, sensitivity training, values clarification, comparative religious studies, death education, family life education, sex education, and one-world government. It is not uncommon for a variety of vague charges to be filed under the guise of secular humanism, the alleged religion of the public schools.

It is imperative that educators become more knowledgeable about proper legal and moral repsonses to challenges by the New Right. The continued conservative castigation of educational practices, theories and materials has resulted in censorship of materials, modifications in curriculum and violations of the academic freedom of educators. It would be nonsensical to assume that the movement will abruptly

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[22]Jerry Falwell, Ed Dobson, and Ed Hindson, The Fundamentalist Phenomenon: The Resurgence of Conservative Christianity (Garden City, N.Y.: Doubleday, 1981), p. 219.

terminate. A cadre of interested and intelligent professional leaders are cognizant of how to focus on issues, bring political pressure, and create change. The New Right movement is well financed and maintains high visibility through the television media via the electronic church. School officials should not succumb to the belief that a New Right offensive against public education cannot arise in their schools. One of the goals of this study is to provide recommendations for public school personnel to utilize in dealing with these conservative pressures from the New Right.

Questions to be Answered

One of the stated purposes of this study is to develop legal recommendations for school boards, administrators, and teachers to use when faced with conservative pressures on public school curriculum. Listed below are the key questions that need to be answered in order to develop appropriate guidelines:

1. Is secular humanism a religion and is it being taught in the public schools?

2. To what extent do conservative groups attempt to censor public school curricular materials and books?

3. How have conservative pressure groups affected the status of prayer, meditation, and religious meetings in the public schools?

4. What is the legal status of evolution, creationism, and balanced treatment statutes?

5. Does a review of recent court decisions indicate the emergence of specific trends?

6. Based on a review of the professional literature and judicial analysis, what tactics should the educational community employ when dealing with conservative pressure groups or individuals?

Methodology

This study began with the identification of the major topic to be addressed. After carefully outlining the subtopics, a method for data collection was selected in order to ascertain if there was sufficient justification for such research. The primary research technique was to identify, review and critique the available references concerning the legal aspects of conservative New Right pressures on public school curriculum.

Journal articles, speeches, pamphlets, books, dissertations, newspapers, and a variety of unpublished documents were utilized for a comprehensive review of the literature and pertinent court cases. Searches were made of a variety of resources including Dissertation Abstracts, the Reader's Guide to Periodical Literature, Education Index and the Index to Legal Periodicals. Numerous sources were located as a

result of a computer search from the Educational Resources Information Center (ERIC).

Federal and state court cases related to the topic were identified through utilization of Corpus Juris Secundum, School Law Bulletin, the National Reporter System, and the American Digest System.

Organization of Issues

The remainder of the study is divided into four segments. Chapter II provides a review of the literature related to the history and growth of the New Right influences on curriculum in public schools. Agendas and philosophy of the New Right will be delineated in order to explain the current assault on public education. A detailed investigation into the assertion that secular humanism and related manifestations are the new religion of the public schools will be presented.

Chapter III is a presentation of the major legal issues pertaining to conservative pressures of the New Right on public school curriculum. Specifically, the areas for discussion are: (1) secular humanism, (2) censorship of curricular materials and books, (3) the evolution-creation controversy, and (4) religious practices such as prayer, meditation, and religious meetings in the public schools.

Chapter IV is a review and analysis of major judicial decisions relating to the four categories identified in Chapter III. Included is a review of the facts of each case, decision of the court, and discussion of the case.

The discussion section will be an elaboration of the facts of the case.

The final chapter contains a summary of the data collected as a result of judicial analysis and a review of the literature. The questions stated in the section "Questions to be Answered" of this chapter will be answered. Recommendations will be made to assist public school board members, administrative personnel, and teachers to deal effectively and tactfully with conservative New Right challenges and pressures.

Definition of Terms

Censorship -- This term is defined by Dr. Joseph Bryson and Dr. Elizabeth Detty as follows:

> A process which limits access to books and materials based on value judgments or prejudices of individuals or groups. The act of censorship may be accomplished by (1) suppression of use, (2) removal of books or materials from the library or classroom, or (3) limiting access of library and instructional materials. Censorship withholds or limits the students' right to read, to learn, and to be informed and the teachers' right to academic freedom.[23]

Conservative -- "Tending or disposed to maintain existing views, conditions, or institutions."[24]

Creationism--"A system or theory of creation: specifically a. the theory that God immediately creates a soul for every known being born (opp. to traducianism); b. the theory

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[23]Joseph E. Brysonand Elizabeth W. Detty, Censorship of Public School Library and Instructional Materials (Charlottesville, Va.: Michie Company, 1982), p. 10.

[24]Webster's New Collegiate Dictionary (Springfield, Mass.: G and C Merrill Co., 1980), p. 239.

which attributes the origins of matter, species, etc., to special creation (opposite to evolution)."[25]

Curriculum--"What persons experience in a setting. This includes all of the interactions among persons as well as the interactions between persons and their physical environment."[26]

Evolution--"A theory that the various types of animals and plants have their origin in other preexisting types and that the distinguishable differences are due to modifications in successive generations."[27]

Fundamentalism--"A religious movement, which originally became active among various Protestant bodies in the United States after the war of 1914-1918, based on strict adherence to certain tenets (e.g., the literal inerrancy of Scripture) held to be fundamental to the Christian faith; the beliefs of this movement; opposite liberalism and modernism."[28]

Humanism--"A doctrine, attitude, or way of life centered on human interests or values; especially: a philosophy

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[25] The Shorter Oxford English Dictionary on Historical Principles (Oxford at the Clarendon Press, 1973), p. 452.

[26] Dale L. Brubaker, Curriculum Planning: The Dynamics of Theory and Practice (Glenview, Ill.: Scott, Foreman, 1982), p. 2.

[27] A Supplement to the Oxford English Dictionary Vol. 1 (Oxford at the Clarendon Press, 1972), p. 1176.

[28] Webster's New Collegiate Dictionary, p. 393.

that asserts the dignity and worth of man and his capacity for self-realization through reason and that often rejects supernaturalism."[29]

Secular--"Of or relating to the worldly or temporal; not overtly or specifically religious; not bound by monastic vows or rules."[30]

Abreaction--"The releasing of pent-up emotion or disagreeable memories by releasing them through words, feelings or actions."[31]

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[29]Ibid., p. 552.

[30]Ibid., p. 1037.

[31]Funk and Wagnalls New Practical Standard Dictionary (Britannica World Edition) (New York: Funk and Wagnalls, 1956), p. 5.

CHAPTER II

REVIEW OF THE LITERATURE

Historical Perspective on Conservative Influences

"I am much afraid that schools will prove to be the great gates of hell unless they diligently labor in explaining the Holy Scriptures, engraving them in the hearts of youth," asserted a famous theologian in arousing the emotions of his disciples.[1] "I advise no one," he continued, "to place his child where the Scriptures do not reign paramount."[2] The remarks did not emanate from the pulpit of Jerry Falwell, Pat Robertson, Francis Schaeffer or any other leader of the conservative political right in modern America. Instead this dictum delivered by Martin Luther in the sixteenth century illustrates that conservative influences and the commingling of religion and education have historical precedent. Whereas the Protestant Reformation had a significant impact on education four hundred years ago, schooling has similarly been influenced by intermittent waves of Protestant revivalism in this nation since the days of the first settlers. "From the Great Awakening of the colonial period, to the resurgence

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[1]William J. Reese, "The Public Schools and the Great Gates of Hell," Educational Theory 32, No. 1 (Winter 1982):9.

[2]Ibid.

of revivalism in the nineteenth century, to the religious movements of modern America," contends William Reese, "evangelical Protestants have linked personal salvation, social order, and national destiny with the fate of common schooling."[3]

Religious motives were paramount both in the founding of Harvard College in 1636 and the establishment of the first public elementary schools in 1642 in the Massachusetts Bay Colony. The Puritans enacted the "Olde Deluder Satan Act" in order to create schools for a specific religious purpose. The Puritans feared that the old deluder, Satan himself, desired to prevent children from learning the Scriptures. It was reasoned that if children could read the Bible, they would have the weapons requisite for escaping the clutches of Satan; hence, the first public elementary schools were established.

William G. McLoughlin, Jr. has identified the following four major periods of revivalism in American history: 1725-1750 (Great Awakening), 1795-1835 (Kentucky Revival), 1875-1915, and 1945-present.[4] The revival periods were characterized by intensified interest in religion. Charismatic leaders like George Whitefield and Jonathan Edwards

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[3]William J. Reese, "The Public Schools and the Great Gates of Hell," Educational Theory 32, No. 1 (Winter 1982):9.

[4]William G. McLoughlin, Jr., Modern Revivalism (New York: Ronald Press Co., 1959), p. 8.

exhorted followers to experience being "born-again" and to reject lifestyles that would certainly lead to hell. The Kentucky Revival mirrored many of the ideological positions of the first movement. Reverend James McGready was known as much for the intensity of the conversion experience as for the actual number of converts.

Concomitant with the emergence of the young nation there developed a trend in which established religions were replaced by "a wide variety of competing denominations that attacked deism, rationalism, secularism, Romanism, and every other potential source of social and educational disorder."[5] The older denominations were replaced by Methodists and Baptists who employed camp meetings to gain thousands of converts. Evangelicals generally supported public schools in hopes that they would serve as bastions of Protestantism. This trend continued through the nineteenth century. Bible reading and prayer were generally accepted public school practices based on custom. Since communities were typically religiously homogeneous, there was limited controversy.

"As the religious complexion of the nation became more diverse in the early 1900s," explains Reese, "rural controlled and largely Protestant state legislatures responded by approving mandatory prayer and Bible reading bills."[6] Law would

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[5]Reese, "Public Schools," p. 12.

[6]Ibid., p. 14.

now impose what had previously been accepted as custom. The legislative enactments were an effort to counter slow but perceptible changes that were taking place in public schools. More emphasis was allocated to vocational education in lieu of transmission of the Protestant ethic. Vicious attacks were launched on public schools in the early twentieth century by evangelists such as Billy Sunday and Dwight Moody. This third period of revivalism abated at the onset of World War I.

During the two decades after the war, Protestant fundamentalists established their own liberal arts colleges, Bible colleges and seminaries, and Bible institutes.[7] They adopted anti-communist platforms and conservative stands on a variety of social issues that were ushered in by more liberal Protestants during and after the New Deal. Two major national fundamentalist organizations, the American Council of Christian Churches, A.C.C.C., and the National Association of Evangelicals, N.A.E., emerged in the early 1940's. These two competing groups have followed somewhat different courses. "The American Council of Christian Churches gave rise to contemporary fundamentalists," contend Ed Dobson and Ed Hindson, "and the National Association of Evangelicals fostered the group of religious conservatives known today as evangelicals."[8]

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[7]Ed Dobson and Ed Hindson, The Fundamentalist Phenomenon: The Resurgence of Conservative Christianity (Garden City, New York: Doubleday, 1981), pp. 13-14, 110-111.

[8]Ibid., p. 121.

While maintaining similar theological positions, the more militant tactics of the A.C.C.C. were often rejected by the evangelicals. Both organizations, however, united as enemies of the more liberal groups, the Federal Council of Churches and the World Council of Churches. The later organization's emphasis "toward an ecumenical movement, the so called superchurch movement, represented for fundamentalists and evangelicals the worst manifestation of modernism in religion."[9]

During the 1950's, fundamentalists joined Senator Joseph R. McCarthy in his campaign against communism. The battle was oversimplified as one pitting good against evil. Those having views contrary to the fundamentalist philosophy were depicted as liberals or communists. A plethora of conservative political groups including We the People, Freedom Forum, the Congress of Freedom, Conservative Society of America, Wake Up America Committee, and the John Birch Society emerged to further the fundamentalist cause.[10]

Another anti-communist organization, Christian Crusade, expanded the battle to fight sex education in the public schools. Led by Billy James Hargis, it was reasoned that sex education was a communist conspiracy to undermine morality

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[9]W. Craig Bledsoe, "The Fundamentalist Foundations of the Moral Majority" (Doctor of Philosophy in Political Science dissertation, Vanderbilt University, 1985), p. 125.

[10]Ibid., p. 143.

in America. Christian Crusade's publication entitled Is the Little Red Schoolhouse the Proper Place to Teach Raw Sex?, became the forerunner for today's anti-sex education movement. "As one of the first large organizations to mix fundamentalist religious belief with political action," asserts Bledsoe, "the Christian Crusade led the way for later organizations such as the Moral Majority."[11] The influence of Christian Crusade diminished when Hargis was confronted with serious moral accusations.

Societal events in the 1950's and 1960's eventually caused a political conservative reaction which presently is taking its toll on public education. Large groups of parents and taxpayers tired of educational issues such as desegregation, busing, prayer, bilingual education, affirmative action, handicapped education, teacher's unions, behavior modification, mini-courses, sex education, drug education, performance contracts, values clarification, social promotion, open classrooms, environmental education, and declining test scores. Non-educational issues such as the war in Vietnam, inflation, increased taxes, larger deficits, urban decay, welfare and accelerated rates of crime fed the conservative backlash.

The Old Right, previously described, began to join forces with the Christian Right to create what was to become the New

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[11] Ibid., p. 154.

Right.[12] To some observers, it appears as though the nation has been suddenly confronted with a new mood of conservatism. In reality this has been a process that has been unfolding over a period of several years. William Pharis and John Martin aptly illustrate the point in the following statement:

> We didn't suddenly hit Reaganomics--we've been sailing naively through the icefield of conservatism for some thirty years. It's just that we've finally managed to smack an iceberg, and doing so was as predictable as finding sand in the spinach salad--not a question of whether, but when.[13]

Human inclination is toward maintenance of the status quo and resistance to change. In a complex, technological, cybernetic society that changes at an ever increasing pace, there is among some a desire to return to a slower pace and a more simplistic lifestyle. The support for the New Right is thus fueled.

The current attacks on public education by abreac conservatives differ from previous assaults in seven ways according to educational consultant Ben Brodinsky.[14] First, the New Right and the President have similar educational philosophies that endorse creationism, public school prayer, and favorable tax exemptions and support for private schools. Next, the New Right has enjoyed considerable legislative and

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[12]Don Melichar, "A Leap of Faith: The New right and Secular Humanism," English Journal 72 (October 1983):55.

[13]Pharis and Martin, "The New Right," p. 31.

[14]Ben Brodinsky, "The New Right: The Movement and Its Impact," Phi Delta Kappan 64 (October 1982):87.

political support in the Congress. This has been especially apparent in the Senate where key leaders have attempted to enact legislation that favors New Right positions on vouchers, tuition tax credits, prayer, aid to private schools, and segregation. Third, the New right maintains a variety of avenues for disseminating propaganda and obtaining funds. Mailing lists, the electronic church, nationally circulated magazines and newsletters, and books provide a formidable means of control for the conservative leaders. Fourth, Brodinsky reports that a widespread network of New Right organizations exists on the national, state, and local level. Next, the New Right operates on many fronts and attempts to influence parents, taxpayers, school board members, administrators and teachers as well as state and national lawmakers. Sixth, propaganda is used skillfully and irresponsibly. Brodinsky alleges the effective use of "the big lie, the little lie, the distortion, the glittering generality, the innuendo, the smear word, the fanning of fears, the incitement of passion."[15] Finally, the assault from the New Right comes at a time when public education is at a low point. Conservative leaders are skilled in influencing school boards to make favorable decisions regarding textbooks and curriculum.

The attacks on education have increased as the new wave of fundamentalism has swept across the nation. Bryson summarizes this movement as follows:

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[15]Ibid., p. 88.

> For well over the last sixteen years, riding on a pale white horse from West to East, from San Francisco to San Diego in California to Virginia--with a bulge in Ohio and with headquarters in Dallas, Texas, a new Bible belt, corresponds geographically to the sunbelt, has emerged. Using the electronic media, with television as the most effective tool, they are preaching a gospel of gloom and doom, that the world is coming to an end at any moment but you still have time to send me one more check.[16]

The last two decades have witnessed a remarkable change in attitude by fundamentalists toward political involvement. As recently as 1967, the Reverend Jerry Falwell, in a sermon entitled "Ministers and Marches," informed his Thomas Road Baptist Church audience that Jesus was basically apolitical while on earth and therefore the church should not become entwined with the issues of civil rights or the Vietnam War. To do so would be acting in opposition to the teachings of Jesus. By 1980, a new attitude and a change of heart was evident in the rhetoric of conservative preachers and the actions of their constituents. A Harris/ABC poll in 1980 found seventy-four percent of white evangelicals believing it is proper for religious groups to participate in politics by supporting specific candidates.[17] In April 1981, a Roper poll discovered that fifty-three percent of fundamentalists believed that religious groups should get involved in election campaigns.[18]

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[16]Bryson, "Supreme Court," speech.

[17]Robert Withnow, "The Political Rebirth of American Evangelicals," The New Christian Right (New York: Aldine Publishing Co., 1983):169-170.

[18]Ibid.

What forces caused evangelicals to reassess their political abstinence? Matthew Moen identifies the following three long-term forces which helped to politicize fundamentalists: the Supreme Court, the drift of American defense policy, and the decline of morality in the 1960s and 1970s.[19]

The Supreme Court's decisions affecting education in McCollum vs. Board of Education (1948), Engel vs. Vitale (1962), Abington School District vs. Schempp (1963), Epperson vs. Arkansas (1968), Swann vs. Charlotte-Mecklenberg Board of Education, and other decisions, provoked fundamentalists and served as a basis for the movement away from public schools and to private schools and home schooling. Equally inflammatory was the 1973 case, Roe vs. Wade, in which the Supreme Court ruled that Jane Roe had a constitutional right to terminate her pregnancy. Zwier contends that this ruling on abortion was a major setback for the conservative cause.[20] It is evident that the high court has aided the coalescing of conservatives by issuing a host of objectionable policy decisions.

The drift of American foreign policy has been a second long-term force stimulating additional fundamentalist political involvement. Two specific trends, emphasis on detente and a

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[19]Matthew C. Moen, "The New Christian Right and the Legislative Agenda: The Politics of Agenda Setting in the 97th and 98th Congresses," (Doctor of Philosophy dissertation, University of Oklahoma, 1986), p. 123.

[20]Robert Zwier, Born Again Politics; The New Christian Right in America (Downers Grove, Illinois: Intervarsity Press, 1982), pp. 23-27.

more understanding posture toward moderate Arab causes in the Middle East, have raised the eyes and provoked the ire of the conservative American community.[21] The concern can be traced to the anti-communist campaign of the 1940s and 1950s and to the traditional pro-Israeli stand by fundamentalist conservatives. The fervent support of Israel is based on Biblical prophecy concerning the battle of Armageddon. New Right leaders assert that America must stand beside Israel in the final days in order to please God.

The third long-term force leading to increased political involvement by fundamentalists has been the decline of traditional morality. The influx of new alternative lifestyles has created paranoia among some segments of society. Advocates of traditional values point to abortion, teenage pregnancies, sexually transmitted diseases, drug abuse, the breakdown of the nuclear family, and the advent of gay rights. The attitude is succinctly stated by Reverend James Robison as follows:

> I am sick and tired of hearing about all the radicals and the perverts and the liberals and the leftists and the communists coming out of the closet. It's time for God's people to come out of the closet and the churches and change America.[22]

Several issues in the mid-to-late 1970s emerged that specifically triggered the New Right movement. The issues

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[21]Moen, "The New christian," p. 127.

[22]Kathy Sawyer, "Christian Soldiers March to Different Drummer," Washington Post (27 December 1984):A1.

are identified by Moen as follows: (1) television evangelist conflict with the Federal Communications Commission (FCC), (2) private religious school conflict with the Internal Revenue Service (IRS), and (3) the presidency of Jimmy Carter.

The first issue erupted in part because the religious right erroneously believed that the FCC was attempting to ban all religious programming from television. A related controversy ensued when WFAA television in Dallas decided to suspend a broadcast by James Robison in which he vehemently attacked homosexuality and gay rights. WFAA feared that airing the program would violate the "Fairness Doctrine" requiring that both sides of an issue be presented. Robison's program was subsequently suspended, but he was thus catapulted into political prominence as he waged war with the television station.

A second matter involved the controversy between private religious schools and the Internal Revenue Service over the tax status of schools that practiced racial discrimination. The IRS crackdown elicited a swarm of protesters who felt that:

> The IRS 'crackdown' was somewhat arbitrary (coming seven years after the initial decision was made), was violative of the First Amendment principle of church/state separation, was outrageous because it marked precisely the sort of government intrusion the evangelical community had sought to escape in the first place in creating its own private school system, and was markedly unfair because it was leveled at 'discriminatory' schools like Bob Jones University not on the basis that such schools practiced discriminatory admissions policies, but on the basis that such schools prohibited interracial dating and marriage (which Bob Jones proponents argued was not discriminatory in

> any case, because it applied equally to white and black students, and was made known to all students before they entered the University).[23]

Despite support from President Reagan, the New Right eventually lost the case in 1983.

The third event that triggered the rise of the religious right was the election to the presidency of Jimmy Carter, an unabashed "born-again" evangelical Christian. Carter admitted that he prayed frequently, went to church on Sunday, had taught Sunday School, and forbade the consumption of liquor in the White House. It would appear that evangelicals had finally found a powerful ally who would take them to the promised land of traditional moral values. Despite a honeymoon period replete with high expectations, the President soon proved to be a major disappointment to the political right. Young summarizes the Carter presidency as follows:

> In trying to please everybody, Carter pleased nobody. In trying to take all sides, stand for everything, he stood for nothing. His own fundamentalist brethren were among the first to turn on him. Liberals felt betrayed because Carter had convinced them he was one of them when he wasn't; conservative fundamentalists felt betrayed because they had accepted him at his word when he spoke of morality and the family and the absolutes of God's laws.[24]

Conservative groups such as Christian Voice attempted to erode support for Jimmy Carter among Southern evangelicals

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[23]Moen, "The New Christian," p. 142. See Bob Jones and Goldsboro cases.

[24]Perry Deane Young, God's Bullies (New York: Holt, Rinehart and Winston, 1982), p. 34.

and waged a campaign associating him with advocacy of gay rights. Television evangelists jumped on the bandwagon and denounced the President for failing to take fundamentalist stands. Carter's evangelical base of support experienced severe slippage during his tenure. Many, including Carter himself, recognize that many voters identified as evangelical deserted the Democratic party in 1980. The movement was gaining impetus and looking for leadership.

Emergence of New Right Leadership

Attention is now focused on those individuals and organizations that have provided the leadership for the New Right. Television has become a prominent medium for disseminating information to rally the fundamentalists. Leading television evangelists will be profiled in order to signify their influence. Other noteworthy leaders who will be discussed include President Reagan and his conservative counterparts in the United States Senate and House of Representatives. Richard Viguerie, Paul Weyrich, and John Dolan, while less visible to the general public, have made profound contributions to the New Right movement and will therefore be profiled. Individual, then collective leadership has given rise to conservative organizations such as the National Christian Action Coalition, Religious Roundtable, Christian Voice, and the Moral Majority, to name only a few. The

contributions and status of each of these will be briefly delineated.

The advent of electronic preachers, or "televangelists" as they have been called, has provided a rich avenue of communication for conservative preachers who are willing to pay for air time. Some of the pastors use a religious service format, while others are more similar to network talk shows. Regardless, the audience is vast as indicated by the following survey of the nation's "Top-rated Christian programs."

Rank	Program	Households
1	Hour of Power (Robert Schuller)	1,300,000
2	Jimmy Swaggart	1,200,000
3	Oral Roberts	944,000
4	World Tomorrow (World Wide Church of God)	595,000
5	Day of Discovery (Radio Bible Class)	528,000
6	Old-Time Gospel Hour (Jerry Falwell)	470,000
7	Ken Copeland	376,000
8	The 700 Club (Pat Robertson)	342,000
9	A Study in the Word (Jimmy Swaggart)	251,000
10	The Jim and Tammy Show	240,000

Source: Report on Devotional Programs, February 1985, Nielsen Station Index, A. C. Nielsen Co.

A Gallup poll reveals that the viewers tend to be Protestant, Caucasian, church members who are over the age of fifty. When compared with nonviewers, they are in poorer health and less educated. Those who watch Christian television have more conservative religious beliefs and more restrictive

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[25]"Heavenly Hosts," Greensboro News and Record, 4 June 1986, sec. A, p. 7.

attitudes on politics, sex, and social issues (see Appendix A).[26]

The electronic church consists of approximately "1,400 radio stations, 3,500 local television and cable systems, 4 all-religious satellite networks, with new Christian radio stations signing on at the rate of one a week, new TV stations at one a month."[27] The income generated by the televangelists is significant. In 1985, Falwell reported donations of 53 million dollars, about one million a week not including tuition to the various schools.[28] During the same time period, Jim Bakker's PTL Club took in more than 72 million dollars from contributions, real estate sales, lodging, food, and retail sales.[29] The majority of this was derived from direct contributions. The Christian Broadcast Network (CBN), headed by Pat Robertson, generated 89 million dollars in donations in 1983 according to Internal Revenue Service records.[30] The era of passing the plate at a tent revival has been surpassed by a new age of electronic evangelism with revenues in the millions.

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[26]Ibid.

[27]Conway and Siegelman, Holy Terror, p. 42.

[28]"Heavenly Hosts," Greensboro News and Record, 2 June 1986, sec. A, p. 6.

[29]"Heavenly Hosts," Greensboro News and Record, 3 June 1986, sec. A, p. 6.

[30]"Heavenly Hosts," Greensboro News and Record, 1 June 1986, sec. A, p. 12.

Currently there are approximately two hundred syndicated religious television shows airing across the nation. The number of Protestant television stations has more than doubled, to over two hundred, in the past year.[31] Pastors of local churches often feel pressured to measure up to the image of the media superstar. Elwood McQuaid reports that "Many capable pastors leave their pulpits deeply disturbed and discouraged each week as they find themselves waylaid by members armed with booklets, tapes, or selected quotations from those 'who really know The Word'."[32] The competition for the Protestant dollar has become intense as contributors face the quandry of whether to support the local church or the charismatic media figure. Additionally, the competition among the televangelists is forcing some to curtail staff and programming. This in turn leads to increased appeals for dollars. Robert Abelman reports that in an average hour of programming, the televangelist solicits $328.00 from each viewer.[33]

Two of the early television stars were Oral Roberts and Rex Humbard. Roberts has received millions of letters, many containing financial contributions for the ministry. Donations

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[31]Ibid., p. 13.

[32]Elwood McQuail, "Reflecting the Stars," Moody 86, No.1 (September 1985):20.

[33]"Heavenly Hosts," Greensboro News and Record, 1 June 1986, sec. A, p. 13.

were utilized to build a unversity and a multi-million dollar medical complex known as the City of Faith in Tulsa, Oklahoma. While the aging evangelist has claimed to answer every letter personally, Jerry Sholes, a former producer for Roberts, maintains that he would have to read and answer twenty-four letters each minute in order to accomplish the mammoth task.[34] According to Sholes, Roberts prays over computer printouts that list the names of those who have written the ministry. Similar tactics are employed by other evangelists.

In January, 1987, Roberts raised more than a few eyebrows even among his most ardent supporters by claiming that in March, 1986 he was given a mandate by God to raise eight million dollars for scholarships so medical school graduates could afford to be missionaries in Third World countries. The evangelist asserts that God allotted him one year to raise the support or he would face death. Roberts pledged to enter a prayer tower for fasting and prayer on March 22, 1987 until the financial goals were achieved or "God calls me home."[35] A last minute pledge of 1.3 million dollars by a Florida greyhound racetrack owner, Jerry Collins, allowed Roberts to reach his goal.[36]

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[34]Jerry Sholes, Give Me that Prime-Time Religion: An Insider's Report on the Oral Roberts Evangelistic Association (Tulsa, Oklahoma: Oklahoma Book Publishing, 1979), p. 1.

[35]"Racetrack Owner Gives Roberts Last $1 Million," by Associated Pres, Greensboro News and Record, 22 March 1987, sec. A, pp. 1, 6.

[36]Ibid.

Rex Humbard, a thirty-year television veteran who began preaching at the age of thirteen, has built a 3,500 seat Cathedral of Tomorrow in Akron, Ohio, and reports in excess of one hundred million listeners in six languages over 620 stations.[37] While emphasizing singing, traditional sermons, and prayer, Humbard, like Roberts, has avoided the political arena.

Other Pentecostal evangelists such as Jimmy Swaggart, Ernest Angley, James Robison, Dwight Thompson, Kenneth Copeland, and Paul and Jan Crouch have significant followings. More moderate conservatives include Charles Stanley and James Kennedy.

Jim and Tammy Bakker are pioneers in the development of the Christian talk show. Jim Bakker, a one-time partner of Pat Robertson, established the PTL Club as a vehicle for spreading the gospel. PTL, which is an acronym for "Praise the Lord" and "People that Love," has been referred to by critics as "Pass the Loot."[38] The daily television broadcast presently reaches an audience of 240,000 households on close to two hundred stations. Organizational activities have been expanded to include the construction and operation of

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[37]Lanny Ross Bowers, "Religion and Education: A Study of the Interrelationship Between Fundamentalism and Education in Contemporary America' (Ed.D. dissertation, East Tennessee State University, 1985), p. 151.

[38]Conway and Siegelman, Holy Terror, p. 51.

Heritage USA, a Christian theme park and retreat center. Bakker's questionable financial affairs have frequently made him the target of media critics.

These dealings have been drastically overshadowed by a recent series of shocking events at PTL. On March 6, 1987, ministry officials announced that Tammy, co-host of the evangelical "Jim and Tammy Show," was being treated in California for drug dependency.[39] Within two weeks, Jim Bakker shocked millions of fans by announcing that he paid blackmail money totaling $115,000 to prevent a sexual encounter with a church secretary from New York from being revealed.[40] Bakker hastily resigned and announced that Jerry Falwell had been appointed as new chairman of the board of directors. The PTL empire now is faced with great uncertainty about the future. Bakker revealed that he had asked Falwell to assume the new position in order to prevent a hostile take-over attempt by a fellow evangelist.

Unlike Bakker, Jerry Falwell and Pat Robertson, giants in the electronic church, have not remained apolitical in orientation. Having effectively mastered the art of combining religion and politics, Falwell and Robertson are considered by many to be the most influential media evangelists in transmititng the agenda of the New Right.

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[39]"The Bakkers Fall," Greensboro News and Record, 22 March 1987, sec. E, p. 2.

[40]Ibid.

From humble beginnings in 1959, Pat Robertson has built a $230 million a year broadcasting empire, Christian Broadcasting Network (CBN), that supports a university, a library, and a social work organization. As founder of "The 700 Club," Robertson blends political predictions with religious prophecy in a talk-show format along with co-hosts Ben Kinchlow and Danuto Soderman. His daily program airs on 198 television stations and purports to reach more than four million viewers each week. CBN, the largest noncommercial broadcasting network in the world, is accessible to more than thirty million cable subscribers.[41] Robertson, assisted by a team of news correspondents, offers news and features on domestic and international affairs. The former Marine lieutenant and graduate of Yale is adept at interviewing elected officials and other controversial figures. "Regardless of the quest or topic," assert Conway and Siegelman, "Robertson almost always manages to steer the discussion toward his own social and political interpretation of the Scriptures, a version that is inevitably pegged to current events."[42]

According to Pharis, the "Christian Broadcasting Network depicts the public schools as 'handmaidens of the Devil' and public school educators as 'despoiling secular humanists'."[43]

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[41]"Heavenly Hosts," Greensboro News and Record, 1 June 1986, sec. A, p. 12.

[42]Conway and Siegelman, Holy Terror, p. 55.

[43]Bowers, Religion and Education, p. 109.

In "Let Their Eyes Be Opened," a half-hour film produced by CBN, it is suggested that the religion of secular humanism controls the public schools and thus has a deleterious effect on those in attendance.

Topics discussed by Robertson may range from education to world economic trends. Each program attempts to educate, or indoctrinate, the viewer on some pressing issue of the day.

Robertson's initiatives have become increasingly political in recent years. In 1981 he founded the Freedom Council and last year he established the Committee on Freedom, a multicandidate political action committee. Robertson's goal is to recruit an army of conservative Christians to espouse the fundamentalist cause. Through CBN University, he aspires to train a cadre of professional lawyers and other professionals to fight the encroachment of secular humanism and modernism in society.

Shrewd and politically astute, Robertson recently purchased a twenty-four seat jet from country singer Kenny Rogers for $900,000.[44] This has enabled him to launch a robust speaking tour to meet prospective voters in churches and civic groups. The potential dark horse presidential candidate has commanded record fees at a series of fund raising dinners across the nation. After the Freedom Council

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[44]"Heavenly Hosts," Greensboro News and Record, 1 June 1986, sec. A, p. 12.

spent $340,000 for salaries and publicity in Michigan, Robertson waltzed away with a number of delegates to the Republican national convention. Vice President George Bush, Representative Jack Kemp and other Americans began to more carefully scrutinize the charismatic broadcaster after the kick-off for the presidential sweepstakes in Michigan in August 1986.

GOP strategists contend that Robertson will never attract the broad base of support needed to secure the presidential nomination. Evangelicals are not unanimously behind Robertson as indicated by Jerry Falwell's support of Vice President George Bush and pro-life support for Congressman Jack Kemp.

As a member of one of Virginia's most prominent families, Robertson claims kinship with President William Henry Harrison. His father, the late U.S. Senator A. Willis Robertson, served as chairman of the Senate Banking and Currency Committee. It appears as though the potential Robertson candidacy serves two functions. First, it raises the possibility that an evangelical conservative could be elected to the White House and exert tremendous influence in returning America to its "Christian heritage." Second, and more likely, the Robertson candidacy will draw national attention to the issues he so dearly loves to debate. In this manner, he could hope to wield considerable influence in shaping the political platform at the Republican national convention.

Robertson is banking on increased mobilization by members of the New Right to ensure the success of his campaign. Clearly, Robertson is one of the most visible and politically active leaders of the fundamentalist movement.

Jerry Falwell, founder and pastor of Thomas Road Baptist Church in Lynchburg, Virginia, towers as the ideological head of the fundamentalist movement. In 1956, he started his church by meeting with thirty-five families in an old Donald Duck Bottling Company building. Soon afterwards he began broadcasting on local radio and television stations. The church grew rapidly as church buses transported people as far as eighty miles away, and new members were recruited by door-to-door, telephone, direct mail, television, and radio appeals.

Lynchburg Christian Academy, originally a segregationist institution, was opened in 1967. Four years later, Liberty Baptist College, now a university, was established as a training ground for future Christian leaders.

Falwell, an independent Baptist with strong but informal ties to the conservative sector of the Southern Baptist Convention, broadcasts a weekly hour long television program, "The Old Time Gospel Hour," as well as a daily thirty-minute radio broadcast. His programs are transmitted on 382 television stations and more than 200 radio shows.[45] In 1986, a

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[45]"Heavenly Hosts," Greensboro News and Record, 2 June 1986, sec. A, p. 6.

bankrupt satellite network was purchased and moved to Lynchburg, thus creating the Liberty Broadcasting Network.

Falwell uses his extensive network to exhort his followers to wage war against sin by fighting pornography, abortion, homosexuality, promiscuity, and secular humanism. He encourages them to take a stand for morality, school prayer, a strong national defense, and fervent patriotism. Falwell strongly endorses political action by Christians in order to further the agenda of the New Right.

Falwell, a tireless crusader, often journeys nearly eight thousand miles weekly in his Westwind II jet, an aircraft that can reach 435 knots and cross the nation without a fuel stop. It is rare, however, for the pastor to miss services at Thomas Road Baptist Church on Sunday morning, Sunday evening, or Wednesday evening.

Falwell is assertive, controversial, and revels in media attention. In the last ten years, his positions have become increasingly political in nature. He mildly criticized President Reagan for his handling of the bombing raids on Libya. Asserting that he was not a Quaker, but a Baptist, he voiced displeasure that Moammar Gadhafi was not killed in the raid.[46] Falwell became the target of substantial criticism when he visited South Africa in 1985 and returned

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[46]Ibid.

to argue against imposing economic sanctions against the government of South Africa in order to accelerate the demise of apartheid. Stating that the South African government would resolve the problem, he also referred to anti-apartheid leader Bishop Desmond Tutu as a phony.

It is not, however, as a small town independent Baptist preacher that Falwell gained recognition. Superstar status originated with the formation of the Moral Majority in the late 1970s. This founding platform, activities, influence and weaknesses of the Moral Majority will be delineated in a subsequent section of this chapter.

Reactions to television evangelists run the gamut from devotion to contempt. Proponents view the trend as a unifying force to rally Christians in the common goal of spreading the message of Jesus Christ to the world. Others suggest that Christian programming provides a healthy alternative to the daily diet of sex, violence and sin promulgated by other networks. Supporters indicate that many people, handicapped, sick, and shut-ins, can now be reached even though they would not be able to attend local worship services. Few would deny that television evangelists do, to some extent, support missionaries, assist the needy with food, clothing, and shelter, and spiritually minister to people.

Several problems, however, have emerged as televangelists proliferate. First, is the money collected through donations really spent on Christian causes? How much of it is spent on overhead costs and purchasing additional air time? Second, where does one draw the line between politics and religion? Is there a deliberate attempt to confuse people by equating conservative political action with biblical teachings? Third, is the electronic church the most effective means for meeting the needs of people? Even the conservative Moody Bible Institute fears that an overdose of the electronic church can turn Christianity into a spectator sport.[47]

Critics of televangelism state that "The electronic church is a heretical movement and a danger to Biblical Christianity because it denies the essentiality of the organized church."[48] John Kater is appalled at the success of the electronic church because members are never in visible or physical contact with one another. He laments the inability to fellowship with other persons of similar religious persuasion as follows:

> Our faith comes to fruition in the life we share with the Body of Christ. Each of us has our own special gifts which make us matter to its life. Without concrete love for our brothers and sisters nurtured and strengthened in the church, our love for God is an illusion. We find our relationship with God in and through our relationships with

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[47]McQuaid, "Reflecting," p. 20.

[48]Mark R. Sills, "The Docetic Church," Christian Century XCVIII (1981):37.

> others. Our life in the church is not peripheral to our Christian faith, it is essential. From the New Testament's perspective, we meet Christ in the community which is his Body. Faith is a private affair, but it comes to fruition only in community. Conversion to Christ is fulfilled when we find Him in another.[49]

Proponents, moderates and critics, however, must all recognize the tremendous influence possessed by the world of televangelism. The impact of this modern technique of transmitting religious and/or political beliefs has not peaked, but has made accessible to millions of Americans, the voice of the fundamentalist New Right preachers at the flick of a dial. They alone, however, cannot take credit for the rise of the New Right.

The election in 1980 of Ronald Reagan to the presidency was more than a symbolic victory for the New Right. Falwell and the Moral Majority claimed a significant amount of credit for the success of Reagan at the polls. Louis Harris, a nationally recognized pollster, also credited evangelicals for putting Reagan in the White House in 1980.[50] During his first term, the President not only publicly supported much of the New Right agenda, but granted it a sense of legitimacy that would not have been possible without his assistance. This task has been accomplished by establishing political ties with New Right leaders and by providing rhetorical support for their

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[49]John L. Kater, Jr., Christians on the Right (New York: Seabury Press, 1982), p. 110.

[50]Bledsoe, "Fundamentalist Foundations," p. 297.

legislative objectives. In numerous instances, conservative religious leaders have been invited to the White House to air their opinions. On the contrary, Reverend Charles Bergstrom, Executive Director of the Office of Governmental Affairs for the Lutheran Council in the U.S.A., has noted that "unlike preceding administrations, this one has been inaccessible to the mainline (Protestant) churches. The mainline churches simply lack access to the White House, while fundamentalists go in and out of there like a revolving door."[51] The President has also left Washington to address conservative religious groups such as the National Affairs Briefing in Dallas in 1980, the National Religious Broadcasters Association (NRB) in Lynchburg, Virginia, in 1980, and the National Association of Evangelicals (NAE) in Orlando in 1983.

President Reagan has worked diligently to push through legislation that supports the New Right agenda. In his 1983 State of the Union message, he supported tuition tax credits for private school students, and favored a constitutional amendment that would permit voluntary school prayer. In his State of the Union address the following year, he reiterated his support for these items and also requested anti-abortion legislation. The mere mention of an issue in a State of the Union message, concludes John Kingdon, "helps bring issues into agenda prominence and gets action on those issues, which is why

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[51]Moen, "The New Christian Right," p. 46.

various interests try so hard to get their issues incorporated into the speech."[52]

Rhetorical support has gone beyond the simple mention of agenda items on an annual basis. In a speech before the Conservative Political Action Committee, Reagan noted:

> We do not have a separate social agenda, a separate economic agenda, and a separate foreign policy agenda. Just as surely as we seek to put our financial house in order, and rebuild our nation's defenses, so too we seek to protect the unborn, to end the manipulation of school children by utopian planners, and permit the acknowledgement of a Supreme Being in our classrooms.[53]

The religious right has subsequently echoed support for the President because he has been good for the movement. "He has spoken to their values, at least publicly supported their legislative objectives, raised their visibility in evangelical circles and their credibility as legitimate political actors among the general public, and probably helped fill organizational coffers."[54] Political conservatives are eager to continue this type of relationship with the White House and will actively pursue political action prior to the next election.

Support for New Right legislative priorities can also be identified on Capitol Hill where conservatives like Senator Jesse Helms were joined in 1980 by a new class of cohorts

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[52]John W. Kingdon, Agendas, Alternatives, and Public Policies (Boston: Litlte, Brown and Co., 1984):197.

[53]Dom Bonafede, "New Right Preches a New Religion, and Ronald Reagan Is Its Prophet," National Journal 13, No. 18 (2 May 1981):779.

[54]Moen, "The New Christian Right," p. 56.

such as John East, Steve Symms, Jeremiah Denton, Paula Hawkins, Charles Grossley, and Don Nickles. The New Right coterie of senators has been helpful to the fundamentalists by urging support for anti-abortion measures, tuition tax credits, and school prayer. Hearings have been held and votes have been recorded on several key issues. Leaders of the New Right are optimistic that the groundwork for future enactment of legislation on social issues had been put in place. While the Christian right agenda has enjoyed considerable support in the Republican controlled Senate during the 97th and 98th Congresses, astute observers now recognize that the Republicans suffered setbacks at the polls last fall and Democrats now comprise the majority. The full impact of this reversal must be assessed in the coming months.

In the House of Representatives, a small group of approximately one dozen Republicans has formalized into a group known as the Conservative Opportunity Society (COS). The "Young Turks," as they are sometimes called, were led by Bill Dannemeyer, Bob Walker, Newt Gingrich, and Vin Weber. The group began in 1983 as a result of informal discussions of House Republicans during a conference in Baltimore. The conservative leaders meet weekly to set strategy for effectively dealing with the Democratic majority. "The Young Turks" are interested in espousing conservative political causes and eventually winning control of the House of Representatives

through the electoral process. The legislative agenda of the New Right has been carried on the floor of the House as illustrated by the following comments from Phil Crane:

> Gingrich and the others have recognized that O'Neill, with his 100 member working majority, needs to be circumvented because the majority controls the agenda. We (the Republicans) are given no opportunity to present an alternative agenda to the one O'Neill sets. Moreover, when we then learn how to exploit his rules to combat him and his agenda, he and the Democratic Caucus change the rules. . . . Hence, I think Gingrich and the others who are exploiting C-SPAN are doing a good thing. They are trying to set a new agenda . . . Gingrich and the others are doing the same thing in a persuasive way, using things like the one minute speeches to ask why we cannot have debates and votes on issues like abortion, prayer, and the balanced budget. I believe the more of these guys we have the better. We need a few more bomb throwers to pitch grenades on the floor of the House.[55]

The collective efforts of President Reagan, New Right senators, and the COS have provided valuable assistance to the fundamentalist cause in two ways, contends Moen. First, the politicians have given the New Right a visibility and respect that could not have been achieved in the absence of such high ranking support. "Second, these visible political actors, by according the Christian Right legitimacy," asserts Moen, "have mainstreamed a group that not long ago was considered on the radical fringe of American politics."[56] New Right religious politicians have thus become a driving force in American society, especially in the Republican Party.

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[55]Ibid., p. 66. [56]Ibid., pp. 66-67.

In addition to the televangelists and politicians, there are numerous other individuals who are instrumental in disseminating the fundamentalist philosophy. Three of these, Richard Viguerie, Paul Weyrich, and Terry Dolan will be profiled because they represent a significant portion of the power base in the movement.

Referred to by some as the "godfather" or "guru" of the New Right movement, Richard Viguerie may be the most important individual in the fundamentalist right network. Thomas McIntyre asserts the following:

> Whatever he is called, this much is certain: To know Richard Viguerie is to know the New Right. And to know how effective he is in raising money, soliciting support for or against legislation, finding ultra-conservative candidates, and exploiting emotional issues is to understand why he angers and deeply concerns the AFL-CIO, Americans for Democratic Action, and loyalist Republican leaders at one and the same time.[57]

Without Viguerie, many of the movement's political action committees and other groups would cease to exist.

In 1961 as national financial secretary of the Young Americans for Freedom, Viguerie faced the onerous task of raising money to dissolve the organization's debt. Four years later Viguerie became a political consultant and invested $400 into direct mail fundraising. The effort has blossomed

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[57]McIntyre, The Fear Brokers, p. 95.

into a multi-million dollar conglomerate that boosts clients such as the Committee for the Survival of a Free Congress, the Conservative Caucus, the National Conservative Political Action Committee, Gun Owners of America, and the National Tax Limitation Committee.[58]

Power flows from an elaborate system of computers that contain pertinent information about twenty-five million Americans in its memory banks, of which 4.5 million are avowed supporters.[59] The massive communication system consists of the effective utilization of new technology, direct and telephone marketing, cable television, radio cassettes, and toll free numbers. Millions of dollars have been raised to support the candidacies of Barry Goldwater, Howard Baker, George Wallace, Jesse Helms, Orrin Hatch, Paul Laxalt, and Strom Thurmond.

Viguerie, a Catholic, has been less successful in finding an educational environment that is suitable for his children. Despite living next door to a prestigious high school in the Washington area, Viguerie withdrew his children from public school and bussed them several miles each day to a Christian fundamentalist school. Stating that he objected to the methods of instruction in history, Viguerie also asserted "It is a good feeling in the evening to know I don't have to spend the next three hours undoing what the school system has done

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[58]Ibid., p. 96.

[59]Bowers, "Religion and Education," p. 139.

to my children."[60] The direct mail genius subsequently removed his children from the Catholic parish's catechism classes after learning that the youth had viewed films on ecology. Eventually, Viguerie left the parish after a series of sermons on the plight of Cesar Chavez and the California migrant farm workers.

Paul Weyrich, a close ally of Viguerie, has been instrumental in uniting various conservative political forces into a comprehensive network with shared objectives. In 1974 he became director of the Committee for the Survival of a Free Congress (CSFC), a right wing PAC (political action committee) devoted to electing conservatives to Congress. Weyrich also teamed with arch conservative Joseph Coors, an early supporter of the John Birch Society, to establish the Heritage Foundation, a fundamentalist "think tank" devoted to creating respect and a broad base of support for conservative causes.

Weyrich joined forces with Robert Billings, a former public school principal, in 1976 and engaged in a cross-country speaking tour to add impetus to the Christian private school movement. His assaults on public schools can be understood in light of the following:

> For Weyrich and other leaders in the coalition, the world is cast into a Star Wars conflict where truth is known; the battle is between the forces of political and religious truth and those of evil and godlessness.

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[60]McIntyre, The Fear Brokers, p. 99.

> Not surprisingly, public education, with its commitment to pluralism and religious neutrality, is cast in the role of the arch-enemy Darth Vader.[61]

The movement gained momentum in 1975 when Ed McAteer, a traveling salesman for twenty-five years with Colgate-Palmolive, drafted a plan with Richard Viguerie to establish the Conservative Caucus, a lobbying group dedicated to enlisting grass-roots support to influence legislators and thereby affect the direction of national policy. McAteer was assisted in his climb to national prominence by Weyrich. In early 1979, Christian Voice appeared on the scene as an openly political fundamentalist organization. Moral report cards were issued to target individuals in public office who held views contrary to those of the New Right.

Weyrich became especially intrigued by the pro-family movement and has become one of the leading spokespersons for that cause. His most significant accomplishment was the establishment, with assistance from Viguerie, McAteer, LaHaye, and Falwell, of the Moral Majority in 1979.

John Dolan, a middle-class lawyer who presides as chairman of the National Conservative Political Action Committee, has been referred to by some critics as the "hit man of the New Right."[62] The NPAC, largest and most powerful of the

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[61]J. Charles Park, "The New Right: Threat to Democracy in Education," Educational Leadership 38 (November 1980):146.

[62]Conway and Siegelman, Holy Terror, p. 95.

political action committees, has solicited millions of dollars to defeat its ideological enemies while electing loyal followers.

In the 1980 political contest he announced plans to seize control of the Senate with conservative legislation. He outlined the following benefits in a letter to his supporters:

> • First, it will rid us of the most radical members of the U.S. Senate and the ringleaders for almost all liberal legislation that comes up in Congress.
> • Second, it will put all the other liberals on notice that if they step out of line . . . the voters will rise up and oppose them. . . .
> • Finally, it will let other good conservatives in the Senate know we can win key strategic battles. . . .[63]

The converging trend of many of the New Right organizations has been illustrated. At this point attention is focused on the following four organizations that have been instrumental in the New Right's rising star: National Christian Action Coalition, Religious Roundtable, Christian Voice, and the Moral Majority.

In 1977, the Christian School Action group was founded by Bob Billings to monitor legislation impacting private Christian schools. The scope was expanded in 1978 to include active lobbying in Congress, and the organization was renamed the National Christian Action Coalition. A political action committee, research foundation and a publishing division have been added to the organization. The primary objective is to

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[63]Ibid., p. 143.

publish "Alert," a monthly newsletter, to inform more than 1200 church affiliated schools of pending legislation affecting their operations. Additionally, they have produced a film starring Senator Helms to educate conservative Christians on political involvement.

"Although it was the first of the Christian Right groups in Washington," avows Moen, "today it is among the smallest and least known."[64] Some organizations wither, become defunct or change objectives, while others emerge with fresh leadership, new approaches and propel the movement forward.

The Roundtable, sometimes referred to as the Religious Roundtable or Christian Roundtable, was founded in 1979 by conservative Christian businessman Ed McAteer and has served the purpose of coordinating resources for New Right religious leaders. It was organized during a two-day meeting that featured heavyweights Paul Weyrich, Richard Viguerie, Howard Phillips, Phyllis Schafly, Adrian Rogers, and Gordon Humphrey. In order to gain visibility, Reverend James Robison was recruited to be the organization's vice-president. The Roundtable reached its zenith in Dallas in 1980 when a National Affairs Briefing attracted more than fifteen thousand people in an effort to recruit support for Ronald Reagan's presidential bid. At this convention, Reverend Bailey Smith, former

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[64]Moen, "The New Christian Right," p. 87.

president of the Southern Baptist Convention, remarked that God did not hear the prayers of unredeemed Jews.[65] National attention was focused on Smith's remarks which eventually led to resignations from the group by James Robison and Pat Robertson.

The Roundtable, at one time a vocal and active group that was instrumental in fueling the New Right movement, has today become a relic.

> The Roundtable (in 1984) has almost no Washington presence. It has no staff presence here in the city, with the possible exception of a secretary to answer the phone, and it does not do any lobbying. . . . From all accounts there is nothing going on within the organization, largely because there is no national membership and no formal organizational structure.[66]

Another organization highly active in recent elections has been Christian Voice, an overtly political association that includes a lobby, a political action committee, and an educational foundation. Headed by the former director of the American Conservative Union, Gary Jarmin, the organization has become infamous because it issues "morality report cards" rating Congressional members on a wide range of topics such as school prayer, Taiwan, balanced budget, abortion, bussing, abolition of the U.S. Department of Education, and Internal Revenue Service regulations affecting private schools.[67]

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[65]Erling Jorstad, The Politics of Moralism (Minneapolis: Augsburg Publishing Co., 1981), p. 94.

[66]Moen, "The New Christian Right," p. 90.

[67]Ibid., p. 91.

An outcry of protests resulted in a change of approach involving this technique.

Christian Voice is a broader based organization than Moral Majority, with disciples from Catholic, Mormon and evangelical churches. The organization gained early notoriety in the battle against homosexual rights, but now attempts to influence a wide range of issues. Gary Jarmin, still active in CV, has also become a leader of the American Coalition for Traditional Values (ACTV), a grassroots organization of evangelicals.

In June 1979, Weyrich, Viguerie, and McAteer, among others, organized the Moral Majority and selected Jerry Falwell to be the visible head of the new group. The organization was comprised of the following divisions: (1) Moral Majority PAC, the political action committee; (2) Moral Majority, the lobbying and direct-mail wing; (3) Moral Majority Foundation, the tax-exempt educational and voter registration division; (4) Moral Majority Legal Defense Fund, the division set up to pursue policy goals through litigation.[68] All but the PAC have flourished to such an extent that many Americans equate the Moral Majority with the religious right.

Falwell has indicated that he had been approached earlier about heading such an organization, but declined until he warmed up to the concept of political activism. After waiting unsuccessfully for leadership to emerge, Falwell

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[68]Jorstad, The Politics of Moralism, p. 74.

finally agreed to step forward and fill the vacuum. Moral Majority was created as a political organization based on moral biblical principles, according to the founders. Men like James Kennedy, Tim LaHaye, Charles Stanley, and Greg Dixon assisted in establishing the organization that is "made up of millions of Americans, including 72,000 ministers, priests, and rabbis, who are deeply concerned about the moral decline of our nation, the traditional family, and the moral values on which our nation was built."[69] Assistance also came from Howard Phillips, Paul Weyrich, Robert Billings, and Ed McAteer, leaders of the political New Right.

The combining of the efforts and influence of these men created a formidable organization for espousing conservative causes. Falwell's network included Thomas Road Baptist Church, with a membership of over seventeen thousand members, and a television program, the "Old Time Gospel Hour," that was telecast on 370 stations around the nation. Based in Roanoke, Virginia, Falwell's organization also directed several educational institutions including Liberty Home Bible Institute, Liberty University, and Liberty Baptist Seminary.

LaHaye, a fundamentalist author with at least sixteen published books, added another dimension to the new movement. He had previously been active in activities opposing gay

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[69]Dobson and Hindson, The Fundamentalist, p. 188.

rights and abortion. Dixon, founder of the Indianapolis Baptist Temple with a membership of eight thousand, became involved in politics as a severe critic of government interference in church activities. Stanley, a leader of the Southern Baptist Convention, also serves as pastor of the First Baptist Church in Atlanta. Like many of his proteges, he has a national satellite audience for his weekly program, "In Touch." Kennedy, a Presbyterian minister in Fort Lauderdale, Florida, hosts a widely distributed television program and has served as a board member of the Religious Roundtable.

Moral Majority was successful in establishing a national network of conservative clergymen. Robert Liebman clearly indicates that an overwhelming amount of support for the Moral Majority is derived from fundamentalists, many of whom come from the Christian school movement.[70] This also provides the organization with a support system that has the capability of extending the goals of political fundamentalism through the educational process.

One must conclude that the Moral Majority is a widespread organization consisting of predominantly fundamentalist leaders nationwide that have banded together to further their conservative positions. The platform of the group is noted by Falwell as follows:

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[70]Robert C. Liebman, The New Christian Right (New York: Aldine Publishing Co., 1983), p. 61.

1. We believe in the separation of Church and State.
2. We are pro-life.
3. We are pro-traditional family.
4. We oppose the illegal drug traffic in America.
5. We oppose pornography.
6. We support the state of Israel and Jewish people everywhere.
7. We believe that a strong national defense is the best deterrent to war.
8. We support equal rights for women.
9. We believe the ERA is the wrong vehicle to obtain equal rights for women.
10. We encourage our Moral Majority state organizations to be autonomous and indigenous.[71]

Whereas John Whitehead and Francis Schaeffer had earlier issued a call to action against secular humanism, the Moral Majority has emerged as the vehicle to bring it about. The organization's response to secular humanism is political involvement. Moral Majority intends to return "moral sanity" to America through the following efforts:

1. By educating millions of Americans concerning the vital moral issues of the day.
2. By mobilizing millions of previously "inactive" Americans.
3. By lobbying intensively in Congress to defeat any legislation that would further erode our constitutionally guaranteed freedom.
4. By informing all Americans about the voting records of their representatives so that every American, with full information available, can vote intelligently following his or her own convictions.
5. By organizing and training millions of Americans who can become moral activists.
6. By encouraging and promoting non-public schools in their attempt to excel in academics while simultaneously teaching traditional family and moral values.[72]

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[71]Dobson and Hindson, The Fundamentalist, pp. 189-190.

[72]Ibid., pp. 193-194.

Moral Majority activities can generally be categorized in one of the four groups: voter registration drives, educational activities, boycotts, and grass roots lobbying.[73] The organization's success with these tactics has varied considerably due to the practice of decentralization. Specific committees in some states might achieve significant gains while other state organizations might be less successful. Guth concludes that "the New Christian Right has had some success in building organizations, affecting legislation, penetrating one political party and mobilizing and perhaps influencing new voters. Whether the Right's current legislative drives will come to fruition and electoral influence remains to be seen."[74]

The Moral Majority, recently renamed the Liberty Foundation, is a viable and active political vehicle with vast resources and numerous supporters. The movement has attempted to control the Congress, courts, and schools. Since its inception, the movement has demonstrated, according to Falwell, the following ten characteristic weaknesses:

> (1) little capacity for self-criticism, (2) overemphasis on external spiritualism, (3) resistance to change, (4) elevation of minor issues to major proportions, (5) a temptation to add to the Gospel, (6) an overdependence on dynamic leadership,

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[73]Bledsoe, "Fundamentalist Foundations," p. 289.

[74]Robert C. Liebman and Robert Withnow, The New Christian Right (New York: Aldine Publishing Co., 1983), p. 39.

> (7) excessive worry over labels and associations, (8) emphasis on absolutism, (9) excessive authoritarianism, and (10) exclusivism.[75]

The leadership of the New Right must now look to the future and deal with several formidable obstacles. Recent damage to the President's position in the Iran-Contra affair, subtle shifts in the make-up of Congress after the 1986 fall election, and a holy war being waged among televangelists such as Jim Bakker and Jimmy Swaggart, offer a threat to the New Right.

Jerry Falwell has emerged with an olive branch, but it remains to be seen if he can bring peace among his contemporaries. One can only speculate how successful Falwell will be in the new role as chairman of the board of PTL ministries. The difference in philosophical orientation between the charismatic apolitical Pentecostal PTL ministries and Falwell's brand of traditional political fundamentalism is significant.

The New Right has thus emerged and garnered both human and financial support. The highly visible leaders must now deal with the future of the movement and current problems surrounding the leaders and programs.

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[75]Bowers, Religion and Education, p. 245.

Secular Humanism

A staunch, conservative, fundamentalist minister addressed the local school board and viciously attacked the district's teachers for propagating the religion of secular humanism. His evidence for these charges, according to Rodney Farmer, include the following:

> Brainwashed children by using role-playing techniques; turned little boys into homosexuals by teaching them to cook; taught students to think too much with inquiry/discovery lessons; produced amoral "godless" behavior with values clarification lessons; increased teenage pregnancy with sex education; stimulated political subversion by using realistic contemporary literature in the classroom; encouraged girls to participate as equals in the work world, which would destroy the family; emphasized global/international education, which supported peace over war and this was "unchristian."[76]

In another area of the nation, Susan Simonson, a parent and former public school teacher, became concerned about the content of her son's sex education class in Corvallis, Oregon. After viewing a film at her church on an insidious new philosophy known as secular humanism, she became convinced that the humanist threat was overtaking America's major institutions such as the media, government, family, and public schools. The sex education class, in her perception, was a subtle element in the humanist threat.[77]

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[76]Rodney B. Farmer, "Secular Humanism: The Newest Controversy in Education," College Student Journal 16 (1982):158.

[77]David Bollier, The Witch Hunt Against "Secular Humanism" (Washington: People for the American Way, 1983), p. 3.

In 1982, she organized a committee and launched a crusade to rid the schools of secular humanism. Similar scenarios are unfolding across the nation with the emotional and financial support of the New Right. Secular humanism has become the bogeyman of the 1980s.

Impassioned conservative writers such as Homer Duncan assert that humanism is "one of the bastard children of evolution."[78] "Governmental schools want to destroy Western civilizaton based on Christian principles," according to Barbara Morris, "and to establish in its place a humanistic and socialistic new world order."[79] Phyllis Schlafly, political activist and founder of the Eagle Forum, charges that "Secular Humanism has become the Establishment Religion of the U.S. public school system."[80]

New Right advocates now maintain that public education is presently the hostage of public school teachers and administrators who purport to spread a new type of religion. In order to understand the specific objections against modern educational methods, theories and programs, an attempt must

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[78]Homer Duncan, Secular Humanism and the Schools: The Issue Whose Time Has Come (Lubbock, Texas: The Missionary Crusader, 1979), p. 26.

[79]Barbara M. Morris, Change Agents in the Schools (Upland, California: The Barbara M. Morris Report, 1979), p. 24.

[80]Joe L. Kincheloe, Understanding the New Right and Its Impact on Education (Bloomington, Indiana: Phi Delta Kappan Educational Foundation, 1983), p. 15.

be made at this point to gain insight into secular humanism, the hysteria of the 1900s.

When societal events go awry and the frustration level of individuals increases, there is a tendency for people to cast blame or create scapegoats. In modern America, the threat of nuclear annihilation, power struggles in world trouble spots, pollution, unemployment, huge federal deficits, and a lack of trust in government leaders have created anxiety about the future. Faced with a dangerous world it is not surprising that scapegoats are sought to take the blame for situations that individuals cannot control. The historical record indicates that this is not a new phenomenon. In twentieth century American history, the "hysteria" of each decade can be identified as follows:

> the 1900's--Big Business was the culprit
> the 1910's--War, anarchy
> the 1920's--Youth, Liquor, Darwinian Evolution
> the 1930's--Depression
> the 1940's--War, Nazism, Fascism
> the 1950's--Communism, Rock and roll
> the 1960's--Vietnam, Civil Rights, Drugs
> the 1970's--Youth, Back-to-Basics, Drugs
> the 1980's--Scientific Creationism, Secular Humanism, Darwinian Evolution[81]

When communists were the boogiemen in the 1950s, at least citizens could rationalize that, though insignificant in number, communists at home had the support of a superpower abroad. As a result, many innocent citizens were falsely

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[81]Bowers, Religion and Education, p. 86.

accused of waving the communist banner. One such person, M. Chester Nolte, professor emeritus of education at the University of Denver, reminds us that "The McCarthy years taught us one thing I had hoped we'd never forget: a real danger is inherent in allowing someone to tack on a label without proof that the appellation is appropriate."[82]

Reverend Bennett suggests that communism and humanism have identical philosophies and similar goals. He asserts, "Both deny the existence of God. The only difference is that the communists are a little more honest, because they say they do not believe in God. The secular humanists say they are nontheistic--a little more subtle."[83]

Indeed secular humanism appears to be a new code word that has replaced communism in the vocabulary of conservative leaders. In the sense that secular humanism is viewed as anti-God, it can also be viewed as pro-Satan.

In modern America, teachers and administrators in public schools are often viewed as the handmaidens of Satan in moving society away from God. Opponents of public schools cite the ban on prayer, situational ethics, drugs, drop-outs, declining test scores, and many other factors as proof of their accusations.

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[82]M. Chester Nolte, "So Color Me a Secular Humanist," American School Board Journal 169 (June 1982):37.

[83]Bennett, "Secular Humanism," p. 44.

Most educators are baffled when charged by abreac conservatives as being secular humanists. "Trying to define secular humanism," contends Barbara Parker of People for the American Way, "is like trying to nail Jello-O to a tree."[84] Consistent definitions of humanism cannot be found even among members of the New Right. Bennett asserts that "Humanism is a manmade system that believes that man can help man without any help from God."[85] Josh McDowell, evangelist, conversely concludes that "the term humanism by itself is not automatically anti-God or pro-God, as many have tried so often to maintain."[86]

Humanism arose during the Italian Renaissance in the fourteenth century. Robert Primack and David Aspy contend that "Humanism was originally a rather specific designation for a group of Christian writers and thinkers who were interested in reviving appreciation of learning and art, especially as exemplified in the civilizations of pagan Greece and Rome."[87] In addition to resurrecting two great civilizations, Renaissance humanism "was to revive that aspect of

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[84]"Secular Humanism: Fundamentalist Lightning Rod," Greensboro News and Record, 5 January 1986, sec. E, p. 1.

[85]Bennett, "Secular Humanism," p. 42.

[86]Josh McDowell and Don Stewart, Understanding Secular Religions (San Bernardino, California: Herb's Life Publishers, Inc., 1982), p. 75.

[87]Robert Primack and David Aspy, "The Roots of Humanism," Educational Leadership 38 (December 1980):224.

Christianity which emphasized human-to-human relationships and put somewhat less emphasis on the human-to-God relationship."[88] The Renaissance was characterized by an exciting growth in thinking and learning. It can be reasoned that the humanism of the fourteenth century Renaissance "eventually resulted in the Protestant Reformation, which evolved into the historical period known as the Enlightenment, which in turn was a major influence on all the founding fathers of the American Republic."[89] Leaders influenced by humanism include Erasmus, St. Thomas Aquinas, C. S. Lewis, Thomas Jefferson, James Madison, John Adams, William Penn, and Benjamin Franklin. Many of the significant Protestant reformers including John Calvin, Ulrich Zwingli, William Farel and Heinrich Ballinger were educated in the humanist tradition.

Nonetheless, a New Right advocate contends that the Renaissance was a blight upon civilization and Christianity. "The Renaissance obsession with nude 'art forms' was the forerunner of the modern humanists' demand for pornography in the name of freedom," writes Tim LaHaye.[90]

Who are the new humanists to whom LaHaye refers? First, there is the American Humanist Association, an organization formed in 1933 with the drafting of the Humanist Manifesto I. This document represented the effort of thirty-four humanists

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[88]Ibid. [89]Ibid., p. 225.

[90]Bollier, Witch Hunt, p. 9.

and dealt with fifteen major themes of humanism. They include, according to McDowell, a New Right evangelist, the following tenets:

> that the universe was self-existing and not created; that man is a result of a continuous natural process; that mind is a projection of body and nothing more; that man is molded mostly by his culture; that there is no supernatural; that man has outgrown religion and any idea of God; that man's goal is the development of his own personality, which ceases to exist at death; that man will continue to develop to the point where he will look within himself and to the natural world for the solution to all of his problems; that all institutions and/or religions that in some way impede this 'human development' must be changed; that socialism is the ideal form of economics; and that all of mankind deserves to share in the fruits from following the above tenets.[91]

The Humanist Manifesto II, published in 1973, further advanced the humanist philosophy. New Right advocates oppose the positions enunciated regarding religion, philosophy, mankind, society, one-world government, and science. The Association for Humanistic Education and the British Humanist Association are also frequent targets of the New Right.

One might consider at this point how the connection has been drawn from the modern philosophy of humanism to public education. Some conservatives point the finger at Horace Mann, a nineteenth century educator who became a chief proponent of universal education and the public school movement.

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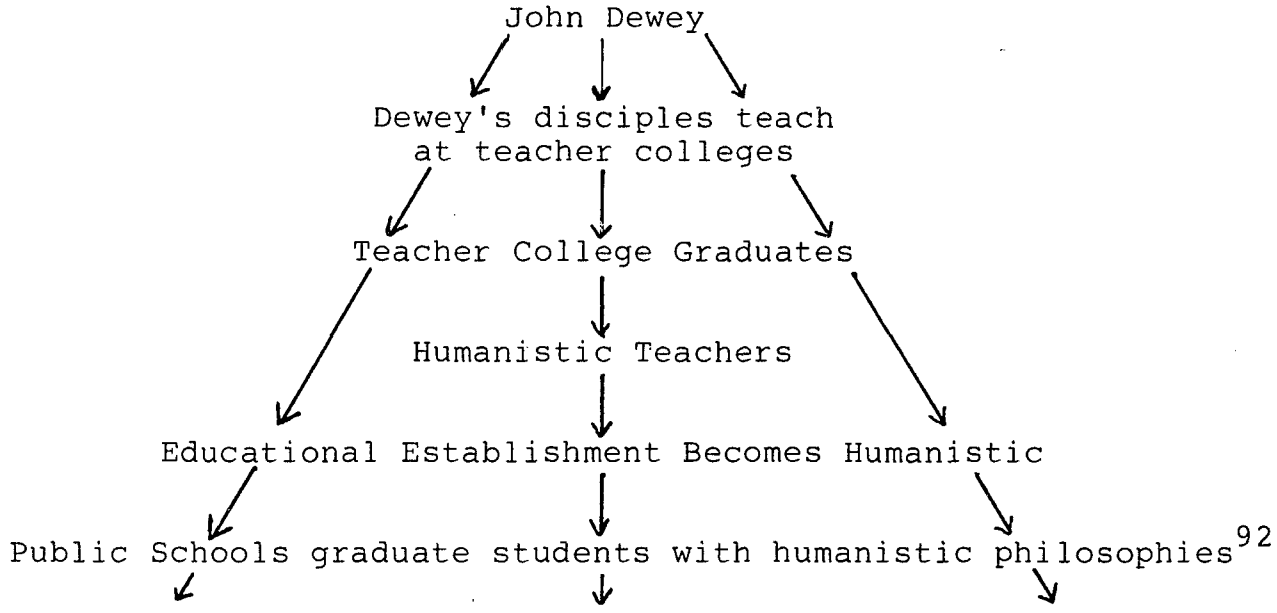
[91]McDowell and Stewart, Understanding, p. 78.

More frequently, John Dewey, an early twentieth century educator who helped to organize the American Civil Liberties Union in 1920, is the target. Dewey was an outspoken critic of the economic, social, and political assaults on education. The influence of Dewey, both as an educator and social reformer, are greatly exaggerated by modern conservatives. Dewey's purported influence can be depicted as follows:

The Spread of Humanism



Fundamentalist attacks often center on articles from The Humanist, the official journal of the American Humanist Association. The following excerpt indicates how the publication has provided plenty of ammunition for the New Right:

> I am convinced that the battle for humankind's future must be waged and won in the public school classroom by teachers who correctly perceive their

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[92]Bowers, Religion and Education, p. 61.

> role as the proselytizers of a new faith: a religion of humanity that recognizes and respects the spark of what theologians call divinity in every human being. These teachers must embody the same selfless dedication as the most rabid fundamentalist preachers, for they will be ministers of another sort, utilizing a classroom instead of a pulpit to convey humanist values in whatever subject they teach, regardless of the educational level--preschool, day care or large state university. The classroom must and will become an arena of conflict between the old and the new--the rotting corpse of Christianity, together with all its adjacent evils and misery, and the new faith of humanism, resplendent in its promise of a world in which the never-realized Christian ideal of "love thy neighbor" will finally be achieved.
>
> . . . It will undoubtedly be a long, arduous, painful struggle replete with much sorrow and many tears, but humanism will emerge triumphant. It must if the family of humankind is to survive.[93]

Critics fail to point out that these remarks were written by John J. Dumphy, a student, in an article submitted in a literary contest. The magazine later issued a retraction and remarked that the essay was irresponsible, but the retraction was ignored by leaders of the abreac conservative movement.

New Right leaders assert that B. F. Skinner, a psychologist and a humanist, has exerted a great influence on modern educational practices. Public school opponents greatly exaggerate the importance of such figures as Skinner and Dewey. Bennett contends that secular humanists are educating our teachers in colleges and universities and controlling the minds of students through textbooks.[94] The National Education

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[93]Ibid., p. 60.

[94]Bennett, "Secular Humanism," p. 44.

Association is a frequent object of attack by conservatives who decry the purported humanistic philosophy of the organization.

Primack and Aspy indicate that the pervasiveness of secular humanism is amplified by the New Right. Surveys, they contend, indicate that ninety-five percent of Americans profess faith in a supreme deity. Of the remaining five percent, many are agnostics or atheists who do not profess secular humanism as a religion. The authors therefore conclude that no more than three hundred thousand Americans could be secular humanists.[95] They further cite that "Every serious survey we have done of strong beliefs held indicates that the people associated with education--school board members, administrators, teachers--are all quite conservative in most matters and particularly religious matters."[96] It is logical, therefore, that if secular humanism is a religion, public school personnel compose only a miniscule percentage of the total membership.

It cannot be assumed, however, that secular humanism is a religion. New Right organizations refer to the Supreme Court's Torcaso[97] decision and the Seeger[98] case as legal

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[95]Primack and Aspy, "The Roots," p. 226.

[96]Ibid.

[97]Torcaso v. Watkins, 367 U.S. 488 (1961).

[98]United States v. Seeger, 85 S. Ct. 850 (1964).

evidence that secular humanism is a religion, but this assertion is vulnerable as will be delineated in Chapters III and IV. Bryson contends, in the following statement, that secular humanism cannot possibly be a religion:

> It is intuitively obvious, based on simple logic, that secular humanism is not a religion. For as already indicated in this manuscript, secular humanism cannot be Godless and be a religion. Such tautology will not stand logical analysis. Thus the charge that public schools are teaching a Godless form of religion is a bogus assertion.[99]

An officer of the American Humanist Association recently reinforced this proposition by stating that "It is wildly paranoid to imagine that they (educators) are part of a conspiracy to foist secular humanism on forty million children."[100] Humanism is thus a philosophy adhered to by a comparative handful of intellectuals who are not controlling the public schools and probably would not want to if they could.

Skeptical conservative leaders, however, continue to warn parents and students about the purported influx of secular humanism in the public schools. A conservative group in North Carolina circulated advice to students advising them to avoid the following:

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[99]Bryson, "Conservative Pressures," p. 139.

[100]"Outrageous Distortions Misrepresent Values Professed by Humanists," Education Week, 5, no. 14 (4 December 1985): 16.

• Don't--discuss the future of future social arrangements of governments in class.
• Don't--discuss values.
• Don't--write a family history.
• Don't--play blindfolded games in class.
• Don't--write an autobiography.
• Don't--take intelligence tests. Write tests only on your lessons.
• Don't--discuss boy/girl or parent/child relationships in class.
• Don't--confide in teachers, particularly sociology or social studies or English teachers.
• Don't--join any social action or social work group.
• Don't--take "social studies" or "future studies." Demand course definitions: history, geography, civics, French, English, etc.
• Don't--role play or participate in sociodramas.
• Don't--get involved in school sponsored or government-sponsored exchange or camping programs that place you in the homes of strangers.
• Don't--submit to psychological testing.
• Don't--get into classroom discussions that begin:
What would you do if . . .?
What if . . .?
Should we . . .?
Do you suppose . . .?
Do you think . . .?[101]

The exclusion and elimination of specific activities and curricular materials has become the primary battle tactic of New Right leaders. Attention will now be focused on the censorship war being waged in the public schools.

Censorship

Imagine the following scenario unfolding in a small rural town in eastern Tennessee in the 1980's. An elementary school teacher reads a favorite American children's story, "The Three Little Pigs," to her attentive students as they

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[101]Brodinsky, "The New Right," p. 90.

relax upon returning from the cafeteria. A teacher across the hallway reads another favorite, "Jack and Jill," to students who practically have each word memorized. At the senior high school, students discuss the meaning of heroism after completing the next chapter in The Diary of Anne Frank.

Scenes such as these would be considered traditional, commonplace, and educational by the majority of American citizens. While the classroom settings previously described are fictitious, the aforementioned literary selections have come under attack by certain fundamentalist Christians who assert that the morals of our young people are being corrupted by secular humanist materials and textbooks. When the three little pigs danced around the burning wolf, were they endorsing witchcraft? When Anne Frank, a young Jewish girl, urged her friend to believe in religion, should she have specified which religion? When Jack and Jill danced in the moonlight, were they promoting satanic worship? Until recently, these questions regarding traditional curricular materials would not have been posed. The emergence of the New Right has signaled the advent of a new era when all materials might experience closer scrutiny and possible censorship.

The practice of censorship has been documented since the earliest accounts of recorded history. Written materials that dealt with political and religious ideologies were the targets of early censors. Morality and obscenity became

issues of legal importance in the nineteenth century. Censorship in recent years has often been aimed at public school instructional and media center materials.[102]

The issue of control has become crucial in censorship issues. Citizens in the community indirectly have control of the schools through boards of education. There remains, however, a delicate balance between lay control, academic freedom of education, and the right of students to receive information.

There can be no question about the legitimate right of a citizen or group "to present objections to books or other instructional materials to the governing body of the school district, the board, or to those employees to whom the board has assigned its authority over these materials."[103] The right to protest, however, is significantly different from the right to suppress, remove, or limit access to material. The right to object is a protected freedom, while the latter is censorship.

A more subtle type of censorship, often referred to as precensorship, occurs during the process of selecting materials. Precensorship can be a problem when educators fail to select materials in order to avoid potential controversies. "These decisions," contends Agnes Stahlschmidt, "are often

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[102]Bryson and Detty, Censorship, p. 13.

[103]Ivan Gluckmon, "Separating Myth from Relaity," NASSP Bulletin 69, no. 485 (December 1985):61.

veiled by impugning the quality of a challenged work, questioning its relationship to the curriculum, or pleading lack of funds--all valid arguments, except when they are used as smokescreens to avoid buying controversial materials."[104] Glen Epley and Kay Moore acknowledge that "Groups wishing to use public education to foster their own goals are working to sanitize thought in the schools through preventive censorship, bringing public pressure on school officials to ignore certain ideas and concepts inimical to the groups' purposes."[105]

The rapid increase in censorship attempts has been well documented during the past decade.

> From 1966 to 1975 the Office of Intellectual Freedom (OIF) of the American Library Association (ALA) cited over 910 cases in the United States schools, 386 of which occurred in high schools. A more recent survey by the OIF reported 300 cases in just one year from 1978 to 1979. In 1980 the ALA reported that censorship pressures of all kinds increased from three to five episodes a week to three to five episodes a day.[106]

By 1982, fifty-six percent of the nation's public schools reported challenges to media center books. The American Library Association now reports more than one thousand new

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[104]Agnes Stahlschmidt, "A Workable Strategy for Dealing with Censorship," Phi Delta Kappan 64 (October 1982):99.

[105]Glen B. Epley and Kay M. Moore, "Censorship in the Schools: The Responsibilities of Courts, Boards, and Administrators," NASSP Bulletin 69, no. 485 (December 1985):55.

[106]Angela K. Sneller, Censorship in Public Schools (Columbia, Missouri: ERIC Document Reproduction Service, ED 207 118, 1981), p. 2.

challenges annually.[107] In 1985, censorship incidents increased thirty-five percent over the previous year.[108]

Censorship attempts today are more likely to be part of a nationally organized effort and are more likely to be successful. Recently, thirty-nine percent of censorship incidents resulted in either the removal or suppression of library books and curricular material.[109] No geographic area of the nation is immune from attack.

Parents comprise the group that is most likely to protest school materials. Surprisingly, school board members and school administrators are second and third in order of involvement in censorship attempts.[110] A major reason for the rapid escalation in censorship attempts can be traced to the efforts of large national organizations that are carefully and deliberately orchestrating many of the protest efforts. Forty-three percent of all reported challenges to textbooks and materials in 1985 can be attributed to the work of the National Association of Christian Educators (NACE), Beverly LaHaye's Concerned Women for America, Pat Robertson's Freedom Council, and Phyllis Schlafly's Eagle Forum.[111] More

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[107] Epley and Moore, "Censorship," p. 56.

[108] Attacks on the Freedom to Learn: A 1985-1986 Report (Washington: People for the American Way, 1986), p. 1

[109] Ibid. [110] Brodinsky, "The New Right," p. 91.

[111] Attacks on the Freedom to Learn, p. 2.

than two hundred national, state, and local organizations are now actively involved in the censorship debate. A representative sample of these conservative groups is listed below:

-American Education Association (AEA), New York City
-American Christians in Education (ACE), California
-Citizens Advocating a Voice in Education (CAVE), Georgia
-Citizen's Committee on Education, Florida
-Citizens United for Responsible Education (CURE), Maryland
-Concerned Citizens and Taxpayers for Decent School Books, Louisiana
-Concerned Parents of Monticello, Iowa
-Guardians of Education for Maine (GEM), Maine
-Indiana Home Circle, Indiana
-Interfaith Council Against Blasphemy, Michigan
-Let's Improve Today's Education (LITE), Arizona
-The National Congress for Education Excellence (NCEE), Texas
-The Network of Patriotic Letter Writers, California
-Parents of Minnesota, Inc., Minnesota
-Parents of New York United (PONY-U), New York
-Parents Rights, Inc., Missouri
-People of America Responding to Educational Needs of Today's Society (PARENTS), Wisconsin
-Young Parents Alert, Minnesota[112]

Most of these groups have become convinced by the inflammatory rhetoric of New Right leaders that secular humanist materials are being utilized to saturate the minds of the nation's young people. Jerry Falwell, for example, made the following observation:

> Textbooks have become absolutely obscene and vulgar. Many of them are openly attacking the integrity of the Bible. Humanism is the thrust of the public

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[112]Edward B. Jenkinson, "Forty Targets of the Textbook Protesters," (paper presented at the Annual Meeting of the Ohio Council of the International Reading Associaton, 10 October 1980), p. 6.

> school textbook. . . . For our nation this is a life-and-death struggle, and the battle lines for the struggle is the textbooks.[113]

Senator Jesse Helms, in a campaign for the National Conservative Political Action Committee, asserted that "tax dollars are being used to pay for grade school courses that teach our children that cannibalism, wife swapping, and murder of infants and the elderly are acceptable behavior."[114] Reverend Falwell, Senator Helms, and many leaders of the aforementioned organizations have not personally immersed themselves in a prolonged study of the content of public school materials. Instead they rely primarily on organizations such as Educational Research Analysts, Inc., a non-profit organization headed by Mel and Norma Gabler in Longview, Texas. Mr. Gabler, a retired Exxon clerk, and Mrs. Gabler, a housewife, have wielded tremendous clout in the evaluation of school materials in the United States, Australia, Canada, and New Zealand.[115] Referring to their organization as the "nation's largest textbook review clearinghouse," the Gablers have distributed thousands of reviews of textbooks to school boards, parents' groups, and leaders of the New Right.[116] The effectiveness of the Gablers' organization must not be underestimated. Research by the American

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[113]Park, "Preachers," p. 609. [114]Ibid., p. 608.

[115]Bryson and Detty, Censorship, p. 64.

[116]Conway and Siegelman, Holy Terror, p. 118.

Library Associaton reveals that approximately one-half of textbook controversies reported by education officials at the state level were linked to evaluations conducted by the Gablers.[117] The evidence is confirmed in a separate research study by Michelle Kamhi, who likewise reports that fifty percent of the state officials interviewed reported that the activities of Educational Research Analysts, Inc. had affected recent adoption proceedings in their state.[118] The findings indicate that pressures exerted at the local level have been influenced to a lesser degree, or at least more indirectly, by the Gablers' organization.

State textbook commissions and textbook publishers have succumbed to the Gablers' influence. In one year during which the Gablers denounced twenty-eight literature and history textbooks in their home state, the Texas State Textbook Committee removed eighteen of the texts from consideration.[119]

Textbook publishers are cognizant of the fact that a negative review of their publications by the Gablers may cost them thousands in lost revenues. Dorothy Massie contends that publishers are forced into amending the content

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[117]Leslie Hendrickson, Library Censorship (Boulder, Colorado: ERIC Document Reproduction Service, ED 264 165, 1985), p. 3.

[118]Michelle Kamhi, "Censorship vs. Selection--Choosing the Books Our Children Shall Read," Educational Leadership 39 (December 1981):212.

[119]Edward Jenkinson, Censors in the Classroom: The Mind Benders (Carbondale, Illinois: Southern Illinois University Press, 1979), p.109.

of textbooks to coincide with the Gablers' political and moral agenda.[120] The revised texts are then marketed across the nation.

What exactly do the protesting organizations oppose? Edward Jenkinson has reviewed thousands of pages of protest materials and delineates forty items that are frequently attacked.[121] The results are detailed in Appendix B. The Gablers have identified the following ten categories of objectionable content:

> (1) Attacks on Values, (2) Distorted Content, (3) Negative Thinking, (4) Violence, (5) Academic Unexcellence, (6) Isms Fostered (Communism, Socialism, Internationalism), (7) Invasion of Privacy, (8) Behavioral Modification, (9) Humanism, Occult and Other Religions Encouraged, and (10) Other Important Educational Aspects.[122]

It is not only the purported inclusion of the above topics, but also the exclusion of religious references from textbooks that has provoked the ire of members of the New Right. Research conducted by Paul Vitz for the National Institute of Education (NIE) in 1985 provided the following conclusions:

> In the first part of the project a total of sixty representative social studies textbooks were carefully evaluated. In grades 1 through 4 these books introduce the child to U.S. society--to family life, community activities, ordinary

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[120]Dorothy Massie, "Censorship in the Schools: Something Old and Something New," Today's Education 69 (November-December 1980):32.

[121]Jenkinson, "Forty Targets," p. 7.

[122]Bryson and Detty, Censorship, p. 65.

> economic transactions, and some history. None of the books covering grades 1 through 4 contain one word referring to any religious activity in contemporary American life. . . . The fifth grade U.S. history texts include modest coverage of religion in colonial America and in the early Southwest missions; however the treatment of the past 100 or 200 years is so devoid of reference to religion as to give the impression that it has almost ceased to exist in America. . . . High school books covering U.S. history were also studied and none came close to adequately presenting the major religious events of the past 100 to 200 years. Most disturbing was the constant omission of reference to the large role that religion has always played in American life.[123]

People for the American Way, after conducting their own investigation, agree that "the role of religion in American history is virtually absent from all of the texts."[124] They also conclude from a survey of biology texts that one-sixth of the books fail to mention evolution and one-half of them provide inadequate coverage of the topic. The threat of litigation continues to increase the pressure on textbook publishers to "dumb-down" their content.[125]

Censors continue to use the threat of lawsuits, regulation, and legislation as effective tools. The Protection of Pupil Rights Amendment, introduced in 1978 by Senator Orrin Hatch of Utah to guarantee parental consent prior to psychological or psychiatric testing of students, has become a valued

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[123] Paul C. Vitz, Censorship: Evidence of Bias in Our Children's Textbooks (Ann Arbor: Servant Books, 1986), pp. 1-3.

[124] Attacks on the Freedom to Learn, p. 2.

[125] Ibid.

weapon in the New Right arsenal. The original intent of the amendment was broadened in 1984 by the Department of Education and has been utilized to attack various programs and curricula throughout the nation.

The selection of public school materials arouses the emotions to the point that reason and logic may sometimes be abandoned. The adoption in 1974 of controversial materials by a school board in West Virginia "resulted in school boycotts, a coal miners' strike, shootings, a bombing of the elementary school, and public prayers for the death of school board members."[126]

Though lacking the volatility of the West Virginia incident, parents and schools are embroiled in many controversial cases. A relatively few examples will be delineated to provide insight into the diversity and scope of the problem.

In Jackson, Alabama, parents protested the inclusion of two Stephen King novels, Christine and Cujo, in the Washington County school libraries because they were viewed as pornographic. The turmoil was resolved when the board of education voted unanimously to remove the books from all county school libraries.[127]

Westminster, Colorado, became the site of a challenge by the Citizens for Excellence in Education, a local branch

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[126]Epley and Moore, "Censorship," p. 56.

[127]Attacks on the Freedom to Learn, p. 9.

of the National Association of Christian Educators. Objections were raised to the use of textbooks on witchcraft, Shakespeare's play Macbeth, Topics for the Restless Monsters, Literature of the Supernatural, and a biography of Marilyn Monroe because they dealt with "death, suicide, ghosts and Satan."[128] The local school board approved the books on the condition that they be temporarily removed if official challenges against them are filed.

In Georgia, a school superintendent recommended removal of Ken Follett's Eye of the Needle due to sexually explicit content. A committee of faculty and administrative members opposed the move, but the board of education voted unanimously to remove the book.[129]

Dictionaries have come under fire in some localities due to purported obscene content. The American Heritage Dictionary has been banned in Folsom, California, due to the inclusion of thirteen controversial words.[130] The dictionary has also been removed from school book shelves in Cedar Lake, Indiana, and Eldon, Missouri. Other forbidden dictionaries include Doubleday Dictionary, The Random House College Dictionary (revised edition), Webster's Seventh New Collegiate Dictionary, and Webster's New World Dictionary of the American Language (college edition).[131]

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[128]Ibid., p. 13. [129]Ibid., p. 16.

[130]Hendrickson, Library Censorship, p. 3.

[131]Michael Scott Cain, "Crazies at the Gate: The Religious Right and the Schools," The Humanist 43 (July-August 1983):16.

In Peoria, Illinois, a committee composed of teachers, principals, and a librarian was formed to review six books written by author Judy Blume after school officials had received numerous complaints protesting alleged explicit language and sexual content. The committee decided that three of the books, Deenie, Then Again Maybe I Won't, and Blubber should be removed because they were not appropriate for children in the lower grades.[132]

A Montana case initiated by parents indicates that teaching techniques in addition to content may be challenged. A Houghton Mifflin reading series, recommended by a committee of teachers, was banished because it did not use the phonics method. Instead it was replaced by a series suggested by parents.[133]

In Fort Smith, Oklahoma, a biology teacher in the Sallisaw School District objected to the use of a senior high text, Biology, on the basis that certain pages were irrelevant. The protest was resolved when the teacher cut nine pages from the texts, stating that students who wished to read those pages must do so within the confines of the classroom.[134]

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[132]"Three Books by Author Judy Blume Don't Play in Peoria," Education Week 4, no. 12 (21 November 1984):3.

[133]Attacks on the Freedom to Learn, p. 26.

[134]Ibid., p. 33.

Printed materials are not the sole object of censorship attempts. In Wisconsin, a high school theatrical production, Morat-Sade, was cancelled after parents protested controversial segments of the play.[135]

The aforesaid cases are far from inclusive, but are mentioned to indicate the diversity of incidents, protestors, and resolutions. A list of challenged materials investigated by People for the American Way in 1985-1986 is presented in Appendix C. The current conflict is appropriately summarized by Sneller as follows:

> Legally, the struggle is between the right of the individual for free expression under the First Amendment, which has been taken to mean the right to have knowledge available to him, and the right of the states to compel and oversee the education of minors and decide what is best for them. Someone must decide on the school curriculum, and someone must select books for the libraries. The question that no one, not even the courts, has been able to answer to anyone's satisfaction is who that someone should be.[136]

The Evolution-Creation Science Controversy

It has been the contention of many Protestant fundamentalists that the teaching of evolution in the public schools is part of the secular humanist plot that has contributed to the moral decline of America. Recent efforts by a group of fundamentalists known as creationists include the introduction

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[135] Ibid., p. 42.

[136] Sneller, Censorship, p.1.

of equal time evolution-creation science bills in more than forty state legislatures as well as the U.S. Congress.[137] Passage of the Congressional bill would have meant allocation of funds to creation scientists equivalent to those granted for evolution research and would have guaranteed equal time for the topics when lectures were given in museums and national parks. A greater manifestation would be equal curricular treatment in the public schools. Dismayed opponents, led by the American Civil Liberties Union, view the conservative movement as one designed to subtly reinstate religion in the schools, thus violating the separation of church and state.

This particular debate of interest can be traced to 1859, the year in which Charles Darwin published a book entitled On the Origin of the Species in which the revolutionary theory of evolution was first espoused. Darwin's beliefs brought about increased conflict between religious fundamentalists and modernists.

A pivotal event in the battle occurred in 1925 in the small town of Dayton, Tennessee. A state statute that prohibited the teaching of evolution in public schools was challenged at that time by a young Dayton biology teacher, John Thomas Scopes. Instantly Dayton became the center of

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[137]Franklin Parker, "Behind the Evolution-Creation Science Controversy," The College Board Review no. 123 (Spring 1982), p. 18.

national attention. The American Civil Liberties Union provided Scopes with three lawyers for his defense, including the brilliant Clarence Darrow. William Jennings Bryan, for years a leading spokesman of the fundamentalist cause, seized the opportunity for a confrontation with Darrow, a long-time adversary.

The court ruled that Scopes was guilty of teaching evolution and imposed a five hundred dollar fine.[138] While a higher court later reversed the decision on a technicality, the actual verdict mattered little. The dismal performance of Bryan in defending the fundamentalist position did little to further the fundamentalist cause and created a credibility gap that enhanced the modernist position. "It was Bryan who would lose most in the end," contends Dobson, "for though he was not the accused and suffered no legal penalty, he lost a reputation, was humiliated in public, and was shown to be a mass of clay even to his ardent supporters."[139] Fundamentalists felt humiliated not only by the defeat, but by the way in which Bryan had compromised their positions in a weak defense. Chief among Bryan's critics was H. L. Mencken, a journalist who stated, "There stood the man who had been thrice a candidate for the Presidency of the Republic--there he stood in the glare of the world, uttering stuff

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[138]Bledsoe, "Fundamentalist Foundations," p. 97.

[139]Dobson and Hindson, The Fundamentalist, p. 86.

that a boy of eight would laugh at!"[140] Bryan collapsed and died a few days after the conclusion of the highly publicized "monkey trial."

Throughout the 1920s, the fundamentalists continued their "major effort to eliminate the teaching of evolution in public schools, hoping thereby to impede the perceived erosion of traditional values."[141] Anti-evolution bills were introduced in twenty state legislatures. "Between the 1920's and early 1960's," asserts William Overton, "anti-evolutionary sentiment had a subtle but pervasive influence on the teaching of biology in public schools."[142] Textbooks were typically devoid of evolutionary content and often did not mention the name of Darwin.

The Soviet Union's launch of the Sputnik satellite in 1957 created a new and urgent interest in the sciences. The National Science Foundation sponsored numerous programs to modernize the teaching of science in America's schools. The Biological Sciences Curriculum Study, a nonprofit organization, in conjunction with scientists and educators, devised

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[140]H. L. Mencken, Prejudices: Fifth Series, p. 69, cited by Bledsoe, "Fundamentalist Foundations," p. 99.

[141]Gail P. Sorenson and Louis Fischer, "Creationism and Evolution in the Schools: The Constitutional Issues," Journal of Thought,18, no. 1 (Spring 1983):25.

[142]William R. Overton, "The Decision in McLean v. Arkansas Board of Education," Society 20, no. 2 (Jan./Feb. 1983):4.

a series of biology texts which incorporated evolution as a major theme.[143] By 1968, only two states, Arkansas and Mississippi, had anti-evolution statutes. Concurrently, however, the fundamentalist movement was beginning to reassert itself with a new emphasis or point of contention. The strategy of opposition to the theory of evolution was converted to "one which sought to require that 'scientific creationism' be given 'equal time' with the theory of evolution in the science curricula of public schools."[144]

The battle lines have thus emerged. Those who support the teaching of evolution contend that evolution is a scientific fact and therefore must be imparted to students as part of the science curriculum. The assertion is made that the Constitution provides that all students have the right to read and receive information. Creationists, to the contrary, launch continuous assaults on the influence of evolution on public education. It is their contention that "evolution is the cornerstone of a pervasive secular humanism that dominates the philosophy of public education."[145] William Ellis summarizes the problem as follows:

> Which assertion is correct? Is evolution heavily stressed in the public schools or is its usage circumscribed by mores, tradition, and

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[143] Ibid.

[144] Sorenson and Fischer, "Creationism," p. 25.

[145] William E. Ellis, "Biology Teachers and Border State Beliefs," Society 20, no. 2 (Jan./Feb. 1983):26.

> cultural inertia? We have no substantive body of knowledge to give an answer. The vituperations of a Jerry Falwell or a Stephen Jay Gould may dichotomize the issues into neat divisions, but the question is not so simple for the average classroom teacher. Caught in the middle of this furor, yet often silent, are the public-school biology teachers of this country.[146]

At this point, the case for both the creationists and evolutionists will be briefly summarized. Fundamentalists insist that academic freedom involves giving students a choice. Wendell Bird, an attorney and former editor of the "Yale Law Journal," contends that the "Government clearly violates a student's freedom of belief or freedom of religious exercise when public schools indoctrinate students in evolution and withhold the scientific evidence supporting creation."[147] Government neutrality therefore should require schools to present both sides of the issue.

> In the days of the Scopes trial, public schools banned evolution and indoctrinated students in the Bible. That was unfair. Now, most public schools ban scientific creationism and indoctrinate students in evolution; it is the Scopes situation in reverse. This too is unfair. Scientific creationism has been suppressed; it cannot compete solely because it has been barred from the marketplace. Evolutionists who respect constitutional liberties should welcome balanced treatment of scientific creationism, just as creationists who respect constitutional rights should support balanced treatment of evolution.[148]

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[146] Ibid.

[147] Wendell R. Bird, "A Response to Gerald Skoog 'Creationism and Evolution,'" Educational Leadership 38, no. 2 (November 1980):157.

[148] Ibid.

Fundamentalists purport that faith is a dominant factor on both sides of the origins issue. They contend that the choice is between faith in evolutionary science or faith in the Biblical account of creation. Tim LaHaye asserts that the belief in evolution is one of the biggest hoaxes of the nineteenth and twentieth century.[149] These critics allege that evolution is a theory and not a scientific fact. "When all else is said," suggests McDowell, "it appears that the humanists rely on science and its evolution to provide the magic formulas needed to materialize the new world order envisioned by the humanists."[150] Science may discover one of the laws of nature, but when it does, McDowell continues, "it is no surprise to God."[151]

The current creationist strategy revolves around two specific aspects. First, the assumption is made that creationism, like evolution, has the status of science. As such, it is one plausible hypothesis among many that accounts for the origin of man. The second aspect is based on the seemingly fair concept of equal time. If evolution and creationism are both unproved theories, then it would appear to be appropriate to teach both and allow students to decide for themselves.

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[149] LaHaye, The Battle, p. 109.

[150] McDowell and Stewart, Understanding, p. 99.

[151] Ibid.

In response, Kenneth Strike contends that creationism is an antiscience, not a science.[152] He assails the creationist approach of dealing with scientific evidence. "Either they take facts that are held to support evolution and attempt to show that they do not," states Strike, "or they take the facts that raise problems for evolutionary theory and attempt to show that they cannot be solved in evolutionary terms."[153]

Wayne Moyer, former executive director of the National Association of Biology Teachers, states that prior to Darwin, creationism was a scientific viewpoint. After the publication of On the Origin of Species, virtually all scientists rejected creationism and embraced Darwin's new ideas.[154] "As such, we can certainly mention it in science classes," suggests Moyer, "but it should not get equal time, any more than we'd give equal time to Ptolemy's concept of the planets revolving around the earth, or to the idea that life is spontaneously generated when horsehair falls into a watering trough."[155]

The two model approach is also rejected by Robert Primack, who states that acceptance of this concept should inevitably

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[152]Kenneth A. Strike, "Creationism 'Equal Respect not Equal Time'," Principal 60-61 (January 1982):28.

[153]Ibid.

[154]Sally B. Zakariya and Marilee C. Rist, "Biology and the Bible 'A Conversation with Wayne A. Moyer'," Principal 60-61 (January 1982):23.

[155]Ibid.

lead to the teaching of alchemy and chemistry, as well as astrology and astronomy as equals.[156] Evolutionists assert that creationism is religion, not science, and therefore should not be taught as scientific theory in the nation's classrooms.

The textbook pendulum continues to swing, first in one direction, then in the opposite, in response to various political pressures exerted by proponents of both sides. Heavily populated states like California and Texas are major purchasers of textbooks and thus have the economic power to influence the publication of editions for their state. School publishers in search of the large accounts may repsond to pressures since they can rarely afford to turn away sales in a major adoption state. Due to the fact that it is economically impractical to develop separate texts for each state, the edition prepared for Texas or California may become the sole edition available across the nation.

In the early 1980's, creationist pressures were evident in many states. One leading textbook producer reduced its section on Darwin from 1,373 words to only forty-five words. The text on evolution was pared from 2,750 to 296 words.[157] While creationism did not abound in new texts, the role of

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[156]Robert Primack, "A Re-Reaction Against Offering Creationism a Place in the Curriculum," Education Week, Vol. IV, no. 3 (September 19, 1984), p. 10.

[157]Conway and Siegelman, Holy Terror, p. 120.

evolution was reduced. The textbook is the hope of various creationist groups. Approximately sixty-six science textbooks published for grades one through twelve already meet creationist criteria, as identified by the Creation Science Research Center.[158] Fewer than twelve major publishers did not meet with the approval of the creationists.

Developments in the mid 1980's, however, may signal a shift in a new direction. In April 1984, the Texas Board of Education repealed a decade old rule that had diluted the treatment of evolution. The California Board of Education, in 1986, adopted eight secondary science texts that were rewritten to give more complete coverage to the theory of evolution.[159] In September 1985, the board had rejected the books and called for revisions in the treatment of evolution as well as other topics such as human reproduction and pollution. Holt, Rinehart, and Winston added an entire chapter on evolution, while another publisher, Scott Foresman and Company, added nine pages of evolutionary material.[160]

Strike acknowledges that schools have the following dilemma:

> They may not gratuitously undermine the religious convictions of their students, yet they must have

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[158]Brodinsky, "The New Right," p. 93.

[159]Michael Fallon, "California State Board Accepts Eight Modified Science-Text Series," Education Week 5, no. 17 (January 8, 1986):7.

[160]Ibid.

> a curriculum. And they cannot exclude an idea from that curriculum simply because the idea conflicts with someone's religious beliefs. To do so would be to give a veto to any and every religious group over any and every part of the curriculum. Little, one suspects, would remain.[161]

Half a century has passed since John Scopes went on trial for teaching evolution, but ghosts from the past seem to be reappearing in various litigious issues across the nation. Specific cases and recomended policies will be delineated in the following three chapters.

Religious Practices: Prayer, Meditation, and Use of Facilities

Any American who has journeyed on the national interstate highway system at the maximum speed, has quickly learned that many of his fellow citizens wink at the speed limit as though it were a request and not a mandate. Organized prayer in public school classrooms was declared illegal by the United States Supreme Court more than two decades ago, but as with the speed limit, statutory mandates dealing with religious issues may go unheeded.[162] A survey of schools in North Carolina by People for the American Way revealed that organized prayer is a daily activity in eighteen percent of the schools. It most often takes the form of a devotional in an individual classroom, but often is delivered over a

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[161]Strike, "Creationism," p. 28.

[162]Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261 (1962).

school public address system. The activity usually consists of reading verses of the Bible as well as prayer. School prayer occurs in many other schools during assembly programs or other school sponsored events.[163]

The proper role of prayer in public life and the debate over access to school facilities have become perennial issues that have evoked passionate pleas from both sides. Presidential candidate George Bush, in a speech at a massive fundamentalist convention, stated the following:

> I cannot believe that the founding fathers intended that the Constitution prohibit children from opening their school with a voluntary prayer. I can't believe that they intended that our constitution permit the use of school buildings by political groups of every extreme shape but not by students of faith for the study of Bible and the word of God.[164]

Instead, Bush pointed to the values of the Judeo-Christian heritage and stated that schools should be representative of this inheritance. Fundamentalists view the expulsion of organized prayer from the classroom as further evidence of the secular humanist plot to brainwash children and lead them further from God. President Reagan has fueled the fundamentalist flames and given them hope for change by advocating a constitutional amendment allowing voluntary prayer in the public schools. In the past fifteen years,

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[163]Patrick Kinlaw, "Survey Findings from the N.C. Project of People for the American Way," Carolina Comment 6, no. 3 (January 1984):2.

[164]Bledsoe, "Fundamentalist Foundations," p. 183.

the House and Senate have defeated four such amendments, the most recent being in 1984.

New Right advocates were successful in 1984 in getting a "voluntary silent" prayer bill and equal access legislation through the Congress. The original goal, with the support of the President, was to secure legislation allowing "voluntary aloud" prayer, but the issue became increasingly controversial and met with defeat after numerous proposals were rejected. Equal access legislation was designed to "allow specifically voluntary, student religious groups in the schools 'equal access' to school facilities on the same basis enjoyed by other student voluntary groups."[165] The idea for the legislation originated with Supreme Court decision in Widmar v. Vincent in which the University of Missouri was instructed to allow student religious groups equal access to school facilities as other groups.[166] The Supreme Court reasoned that the university constituted an open forum with regard to student groups and therefore access to campus buildings could not be denied to student religious groups. Congressional efforts over equal access were designed to "extend the breadth of the High Court decision down to secondary and/or elementary schools."[167] A host of religious

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[165]Moen, "The New Christian," p. 265.

[166]Widmar v. Vincent 454 U.S. 263 (1981).

[167]Moen, "The New Christian," p. 266.

groups such as the Southern Baptist Convention and National Council of Churches favored equal access for secondary schools only. Various independent Baptist churches and conservative fundamentalist groups supported equal access for both elementary and secondary schools.[168]

In the absence of Congressional action on a constitutional amendment to permit "voluntary aloud" prayer, state legislators have turned to statutes permitting moments of silence in an effort to accommodate school prayer advocates without violating the law. In June 1985, the Supreme Court struck down an Alabama law that allowed public schools to begin the day with a moment of silence for voluntary prayer or meditation.[169] While stating that the inclusion of the word "prayer" represented an illegal attempt to advance religion, it was assumed by some that a moment of silence by itself would pass constitutional muster. As a result, approximately half of the states have approved moment of silence statutes. Details of the litigious and judicial issues will be presented in the ensuing chapters.

New Right advocates of public school prayer have often portrayed the contest as a philosophical struggle between believers and atheists; however, this view is much too simplistic. Contrasting philosophies assert that prayer is too

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[168]Ibid.

[169]Wallace v. Jaffree 105 S.Ct. 2479 (1985).

important and too intimate to become a function of the state. Prayer in this manner becomes trivialized. Critics of the New Right indicate that children can already voluntarily pray in schools. Nothing prevents a student from bowing his head in prayer or meditation. They simply may not pray as part of an organized worship program sponsored by the school. If prayers are prearranged by a legislature, teacher or principal, several troublesome questions emerge according to school prayer opponents. Would the prayer be Protestant, Catholic, Jewish, Christian, Moslem, or of some other faith? What would happen to those students that chose not to participate? To whose God would the prayer be addressed? What would be the content of the prayer? Can prayer be generic so that it would apply equally well to all students?

The viewpoint of religious leaders who oppose school prayer is summarized by the Reverend M. William Howard as follows:

> What I think we don't want is government-supported evangelism or proselytizing. This would only be asking for problems which our already-troubled public schools don't need. Instead, America's public schools need our help to be restored as free spaces for learning by all children, without intimidation. An important ingredient in this environment is their discovery of what they share--not the belaboring of what makes them distinct and separate.[170]

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[170] M. William Howard, Whose Prayer? How the School Prayer Amendment Attacks Religious Liberty (Washington: People for the American Way, 1983), p. 8.

School prayer opponents contend that the ritual repetition of prayer trivializes communication with God in much the same way that rote repetition of the Pledge of Allegiance connotes a false sense of patriotism. Prayer, they assert, should be an act of conscience rather than custom without conviction.

Religious school prayer opponents believe in the sanctity of prayer, but disagree with fundamentalists on where it should occur. Instead of state sanctioned prayer, they recommend that parents invest the time needed to teach children how to pray as demonstrated in the following remarks:

> These parents pray with their children at home, in family gatherings, and in places of public prayer and worship. They pray for their children in school, and they pray with their children before school. They teach, from their own experience, how to have silent moments of prayer throughout the school day. They tie prayer to caring and respect for others, diligence in learning, helpfulness in common tasks, strength in rejecting destructive behavior, and patience in failing and starting over. They join prayer with laughter and tears and a will to live and rejoice. They do not legislate prayer; they live it.[171]

New Right advocates view the current legal status of prayer in the schools as a Satanic inspired perversion of the Bill of Rights. They assert that our obedience to the separation of church and state has created a rift far greater than ever intended by the founding fathers. The debate thus

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[171]Eugene W. Kelly, Jr., "How Prayer and Public Schooling Can Coexist?," Education Week 6, no. 10 (November 12, 1986):24.

continues with the unfortunate consequence of turning the nation's school children into pawns in the political war between abreac conservatives and the rest of the nation.

Summary

In the ebb and flow of political events throughout our nation's history, various surges of conservative and liberal influences on the fabric of American life can be identified. Recent years have been marked by the influx of conservative religious-political thought that has been perpetuated by political power brokers behind the scenes and television evangelists as the torch carriers. This new breed of abreac conservatives is characterized by a growing national power base, political activism, and a desire to impact many areas of American life including the public school system.

All of the various charges against the public schools have been lumped together and branded as secular humanism. The American public has been asked to believe that a band of conspirators belonging to a nontheistic religion has infiltrated the nation's public schools and has gained control of the minds of our children in an attempt to convert them to "godless" secular beings who reject all vestiges of religious heritage.

The war has been fought on various battlefronts including censorship, prayer in schools, equal access to school facilities, and scientific creationism. Increasingly large

numbers of citizens become emotionally and politically involved as the struggle intensifies. Staunch advocates of both sides become more defensive with increasing assaults from their adversaries.

Attention will now shift from a review of the professional literature to a judicial analysis of litigation and court proceedings that have impacted the controversy. Additional clarity can be gained by careful scrutiny of the legal basis of the conflict. This will provide the basis for the recommendations to follow in Chapter V.

CHAPTER III

THE LEGAL ASPECTS OF CONSERVATIVE NEW RIGHT INFLUENCES ON THE PUBLIC SCHOOLS

Introduction

The First Amendment to the United States Constitution maintains that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."[1] These few words have precipitated intense debate and litigation among various segments of the American society who have conflicting interpretations about the intent of the drafters of the amendment.

Federal courts traditionally refrain from becoming involved in the administration and daily operations of the public schools since education is not specifically mentioned in the United States Constitution and thus is a matter reserved for each state. Nevertheless, federal courts intervene in litigation involving the following two principal issues: "(1) alleged violation of constitutionally protected right, privilege, or immunity of an individual; and (2) validity questions of state or federal statutes under the United States Constitution."[2]

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[1]United States Constitution, Amendment I.

[2]Bryson and Detty, Censorship, p. 72.

The scope of this chapter is limited to an examination of recent instances of federal court intervention in cases involving the following: (1) secular humanism; (2) censorship of curricular materials and books; (3) the evolution-creatonism controversy; and (4) religious practices such as prayer, meditation, and religious meetings in the public schools. All of these controversial areas have been litigated and precedents have been established. Prior to judicial analysis, however, attention will be focused on judicial standards of interpretation for resolving church and state conflict in the nation's public schools.

Judicial Standards of Interpretation

The early period of American history contributed various justifications for the separation of church and state. Evangelical religious leaders such as Roger Williams feared the "corruptive influence of secular statism on religious purity."[3] Separation was thus viewed as a method of protecting the spiritual lives of individuals from government intrusion. Thomas Jefferson espoused a more worldly view that sought to protect the government from the unwarranted influence of religion. In a letter refusing a request from the Baptist Association for a national day of prayer and thanksgiving, Jefferson asserted that the religion clauses of the First

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[3]Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2d Ar. 1980), p. 974.

Amendment were designed to erect "a wall of separation between church and state."[4] While this terminology does not appear in the First Amendment, it has nevertheless become a frequently utilized metaphor to portray the sentiments of the amendment's drafters.

A third view justifying church and state separation was advocated by James Madison and held that "both religion and the state would prosper if freed from the undesirable effects each presented to the other."[5] The United States consolidated these historical points of view to articulate the following three major policies involving religious freedom: "voluntarism of religious thought and conduct, government neutrality towards religion, and the separation of church and state."[6] For more than one hundred and fifty years after the birth of the nation, litigation involving these issues was infrequent and sporadic. As the role of the federal government has become more pervasive, increased tension has developed between the principles of voluntarism and separation.

In the first significant establishment clause decision, the United States Supreme Court attempted to define the clause as follows:

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[4]Martha M. McCarthy, "Religion and Public Schools: Emerging Legal Standards and Unresolved Issues," Harvard Educational Review 55, No. 3 (August 1985):281.

[5]Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2d Cir. 1980), p. 974.

[6]Ibid.

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State."[7]

The Supreme Court reiterated this position in 1963 by stating that the purpose of the First Amendment was to impose a complete "separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."[8] In this case, state endorsed prayer and Bible reading in public schools were ruled to be in violation of the establishment clause. "The Court," summarizes McCarthy, "applied two criteria in assessing the constitutionality of the challenged state action: Does it have (1) a secular (nonreligious) purpose and (2) a primary effect that neither advances nor impedes religion?"[9] The Court, concluding that the practices at issue had a sectarian purpose and advanced religion, ruled the exercises to be violative of the establishment clause.

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[7]Everson v. Board of Education, 330 U.S. 1 (1947), p. 15.

[8]Abington School District v. Schempp, 374 U.S. 203 (1963), p. 216.

[9]McCarthy, "Religion and Public," p. 287.

In a 1970 case,[10] the Supreme Court attempted to determine if a legislative action avoided excessive governmental entanglement with religion. A third criterion was thus added to judicial interpretation of the establishment clause. The first education case to use all three criteria was Lemon v. Kurtzman[11] in 1971. In the tripartite test, a policy or activity is constitutional if it has a secular purpose, has the primary effect of neither advancing nor inhibiting religion, and avoids excessive government entanglement with religion.[12] Failure to meet the requirements of even one prong of the test dictates that a policy or activity be ruled unconstitutional. This test is now routinely used by the Supreme Court in ruling on religious matters in the public schools.

If a violation of the establishment clause is found, the appropriate legal remedy is a "prohibition of the unconstitutional governmental activity."[13] Merely excusing students offended from participation in the challenged activity is insufficient rectification. The establishment clause is used most often to challenge purported promotion of religion by the government or schools.

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[10]Walz v. Tax Comm'n of the City of New York, 397 U.S. 664 (1970), p. 664.

[11]Lemon v. Kurtzman, 403 U.S. 602 (1971).

[12]Ibid.

[13]McCarthy, "Religion and Public," p. 288.

In contrast, in free exercise litigation, neutral regulations by the government are usually disputed on the basis that such regulations impede the religious practices of an individual. Martha McCarthy distinguishes between free establishment and free exercise violations as follows:

> To prove a free exercise violation, the individual must show the direct or indirect coercive effect of the governmental enactment as it operates against the practice of religious beliefs; such a coercive effect is not required to prove an establishment clause violation. Establishment clause cases focus on the legality of the governmental action itself, whereas in free exercise claims individuals generally accept the legitimacy of the governmental regulation but assert an entitlement to special treatment because the regulation has an adverse effect on the practice of their faith.[14]

In assessing the legitimacy of free exercise cases, the court first ascertains if the individual challenging a practice is doing so based on sincere and legitimate religious beliefs. Next, the court must determine whether the state or school district has a compelling interest that justifies the burden imposed on the free exercise of the individual's religious beliefs. Finally, if the state's compelling interest is substantiated, the court must determine if the activities of the state were implemented in such a way that required the least restrictive burden on an individual's free exercise rights.[15]

The remedy for a free exercise clause violation may require an exemption from the practice for those who were

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[14]Ibid., p. 289. [15]Ibid.

offended. Unlike establishment clause violations, the practice itself would not have to be terminated.

Litigation in recent years stems from tension between the religion clauses. Both "are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other."[16] Courts are thrust into the difficult position of maintaining government neutrality toward religion. This task is extremely complex because efforts to respect and accommodate the free exercise rights of an individual or group "can be viewed as an advancement of religion in violation of the establishment clause, but overzealous efforts to guard against state sponsorship of religion can impinge upon free exercise rights."[17]

Secular Humanism

The accusation that public schools are advancing a new religion known as secular humanism centers on the following two issues: "(1) the fact that public schools cannot teach religion, and (2) the humanistic philosophy of education which supports the belief that education should be sensitive to the need of students."[18] A review of relevant case law will reveal how litigious issues have both supported and denied the assertions of New Right conservatives.

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[16]Waly v. Tax Comm'n of the City of New York, 397 U.S. 664 (1970), p. 668.

[17]McCarthy, "Religion and Public," p. 791.

[18]Bryson, "Conservative Pressures," p. 138.

A 1961 case, Torcaso v. Watkins,[19] dealt with a citizen who was not given a job in the Office of Notary Public due to his refusal to profess a belief in God. The Supreme Court ruled that this was an improper and impermissible basis for job exclusion. In writing the majority opinion, Justice Hugo Black asserted the following:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in religion." Neither can constitutionally pass belief laws to impose requirements which can aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.[20]

The Supreme Court helped the forces of the New Right in their quest to halt the spread of secular humanism by officially citing it as a religion in footnote eleven of the case. The citation reads as indicated:

> Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Cultural, Secular Humanism, and others.[21]

The Third Circuit Court of Appeals, in Malnak v. Yogi,[22] attempted to narrow the breadth of the Supreme Court's reference to secular humanism. Asserting that the terminology only referred to a specific non-theistic group under discussion, the court held that "Torcaso does not stand for the

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[19]Torcaso v. Watkins, 367 U.S. 488.

[20]Ibid. [21]Ibid., p. 495.

[22]Malnak v. Yogi, 592 F. 2d 197 (3rd Cir. 1979).

proposition that 'humanism' is a religion, although an organized group of 'Secular Humanists' may be."[23]

New Right advocates frequently refer to Abington School District v. Schempp[24] as further evidence of the judicial imperative to keep secular humanism out of the schools. In that case, the Court held:

> [I]t is insisted that unless these religious exercises are permitted, a "religion of secularism" is established. We agree of course that a State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe."[25]

United States v. Seeger[26] is another case frequently cited by New Right groups. In this case involving conscientious objectors, the Supreme Court upheld the rights of the defendants to be excused from military service because they held "a sincere and meaningful belief . . . parallel to that filled by the God of those admittedly qualified for the exemption."[27] The case implies that religions may be theistic or non-theistic. If therefore a religion need not be theistic, the argument that secular humanism is a religion is enhanced.

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[23]Ibid., p. 212.

[24]Abington School District v. Schempp, 374 U.S. 203 (1963).

[25]Ibid., p. 225

[26]United States v. Seeger, 380 U.S. 163 (1965).

[27]Ibid.

Critics of public schools, however, were unable to prove from these citations that the secular humanism referred to is the same humanism discussed in the Humanist Manifesto I and II. Neither has a direct link been drawn from either of these to current educational practices in America's classrooms. Nevertheless, a textbook controversy in Kanawha County, West Virginia, in 1974 indicated that the scope and emotional depth of the controversy was rapidly accelerating. Prior to the 1974 protests, conservative and fundamentalist parents "saw themselves as victims of a liberal, morally decadent larger society that had left behind their old-fashioned attitudes about religion, morality, and social behavior."[28]

The controversy began when Gry and Shonet Williams brought suit against the school district challenging that certain textbooks and supplementary materials violated their constitutional rights to freedom of religion and privacy. The textbooks at issue were alleged to contain "stories promoting and encouraging a disbelief in a Supreme Being, and encouragement to use vile and abusive language and encouragement to violate the Ten Commandments."[29] The court ruled that although some of the subject content might be offensive to the sincerely held beliefs of the plaintiffs, the use of the textbooks was not a violation of their constitutional rights.

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[28]Kincheloe, "Understanding," p. 7.

[29]Williams v. Board of Education, 388 F. Supp. 93 (S.D.W.V. 1975), p. 95.

Justice Hall asserted that the First Amendment "does not guarantee that nothing about religion will be taught in the schools nor that nothing offensive to any religion will be taught in the schools."[30] States, he maintained, were only prohibited from advancing or inhibiting a religion. In spite of the judicial ruling in favor of the school district, Kincheloe maintains that the widespread attention given to this case "gave conservatives around the country a new sense of confidence."[31]

In Crockett v. Sorenson,[32] the issue involved the constitutionality of a Bible class program for fourth and fifth grade students in the public schools of Bristol, Virginia. A ministerial alliance retained complete control over staffing and curricular decisions for the program. Though attendance was voluntary, Justice Kiser concluded that the courses were a violation of the United States Constitution because there was no secular purpose and control had been relinquished by the state. The court did affirm the legality of Bible study in the schools when the intent was educational and not religious. Public schools should not be insulated from any mention of religious topics, he avowed, because "when such insulation occurs, another religion, such as secular humanism, is effectively established."[33]

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[30]Ibid., p. 96. [31]Kincheloe, "Understanding," p. 7.

[32]Crockett v. Sorenson, 568 F. Supp. 1422 (1983).

[33]Ibid., p. 1425.

Purported advancement of secular humanism was the assertion in Grove v. Mead School District No. 354,[34] a 1985 case focusing on The Learning Tree, a novel by black author Gordon Parks. Both Cassie Grove and her mother objected to the anti-Christian values and offensive language allegedly contained in the novel. Though Cassie was given an alternative assignment and not required to participate in classroom discussions about the book, the parent filed suit against the school district asserting that an establishment of religion, secular humanism, had been created. Though the plaintiffs had the support of the Moral Majority, the Ninth Circuit Court of Appeals failed to concur with the assertion. The court maintained that the plaintiffs assumed erroneously that humanism was anti-religious. Footnote eleven in Torcaso,[35] a chief weapon for the plaintiffs, was greatly misinterpreted according to the court. Justice Eugene Wright concluded that use of the book violated neither the free exercise nor establishment clauses.

Textbooks continued to be the source of controversy in Mozert v. Hawkins County Public Schools,[36] a 1983 case contesting the use of the Holt reading series in public schools. Parents feared that exposure to the series and its alleged

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[34]Grove v. Mead School District No. 354, 753 F. 2d 528 (9th Cir. 1985), cert. denied 106 S. Ct. 85, 88 L. Ed. 2d 70.

[35]Torcaso v. Watkins, 367 U.S. 488.

[36]Mozert v. Hawkins County Public Schools, 647 F. Supp. 1194 (E.D. Tenn. 1986).

themes of values clarification, witchcraft, idol worship, situational ethics, and euthanasia, would transform their children into secular humanists. At first, school officials provided alternate assignments, but this practice was not sanctioned by the board of education and thus discontinued. Parental refusal, at that point, to send their children to class resulted in suspensions for the students. Later, the students were enrolled in private Christian schools in the area. Alleging a violation of constitutionally protected freedoms, the parents initiated litigation against the school district.

The defendants stated that utilization of the basal reading series was not intended to advance the religion of secular humanism. While some material might be offensive to some parties, the district maintained that providing alternative programs upon request to any parent would result in an unwieldy program that would be difficult to administer. Witnesses for the plaintiffs, however, indicated that the state had numerous basal reading programs on an adoption list, thus good instruction in reading could be achieved without use of the Holt series. Educators also testified to the advantages of an individualized educational program over one that involved continuous large group instruction. The state's interest in ensuring uniformity was ruled not to be absolute by the court. It was reasoned that the school district should

accommodate the beliefs of the students involved, and that such accommodation "would not wreak havoc in the school system."[37]

After enjoining the board from assigning the Holt series to the children of the plaintiffs, the court suggested that the parents be allowed to remove their children from the school reading program and instruct them in that subject area at home. Home schooling, a practice permitted by Tennessee statute, was deemed to be the only practical solution since evidence tended to indicate that the parents might object to some material in all of the programs on the approved state adoption list. Judge Hull stated that the ruling of the court was limited specifically to the plaintiffs involved and did not have general application to other situations. "Further accommodations, if they must be made," he asserted, "will have to be made on a case-by-case basis."[38]

A suit that has frequently been linked with the Tennessee litigation is an Alabama case, Smith v. Board of School Commissioners of Mobile County.[39] While possessing some similarities, the judicial logic and findings traveled different

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[37]Kirsten Goldberg, "Textbook Decision Fueld Debate on Role of Religion in Schools, Rights of Parents," Education Week 6, No. 9 (November 5, 1986):18.

[38]Ibid., p. 19.

[39]Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Alabama 1987).

routes. In the latter case, a local school board was accused of unconstitutionally promoting secular humanism as a religion in the public schools through the use of social studies, history, and home economics textbooks. The plaintiffs alleged that the advancement of secular humanism as a religion had the effect of inhibiting the practice of their own religion, fundamentalist Christianity.

Textbooks were criticized for including anti-Christian themes, situational ethics, improper and offensive language, and evolutionary theory. They were likewise castigated for omitting documentation concerning the import and contributions of religion on American life.

A long series of witnesses provided testimony about the quality of education in Alabama, the rise and development of humanism, content of textbooks, and definitions of religion. Dr. Paul Kurtz, a leader of the American Humanist Association, asserted that secular humanism was a scientific approach to life, rather than a religion. At the conclusion of the testimony, Justice Hand reasoned that secular humanism was a religion that denied the "transcendent and/or supernatural: there is no God, no creator, no divinity."[40] The religion, he proclaimed, encouraged personal fulfillment of the individual based on rational intellect and denied any dependence on divine guidance. Justice Hand alleged that secular humanism

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[40]Ibid., p. 979.

had a belief system, leaders, and organizations that exalted mankind as the source of morality.

The court then turned to the issue of determining if the textbooks used in the Alabama public schools had the effect of promoting or establishing the religion of secular humanism. Justice Hand, in assessing the content of social studies and history books, stated that "religion was so deliberately underemphasized and ignored that theistic religions were effectively discriminated against and made to seem irrelevant and unimportant within the context of American history."[41] A similarly negative reaction was expressed about the content of home economics books which allegedly reinforced situational ethics. In summation, Justice Hand adduced the following:

> The question arises how public schools can deal with topics that overlap with areas covered by religious belief. Mere coincidence between a statement in a textbook and a religious belief is not an establishment of religion. However, some religious beliefs are so fundamental that the act of denying them will completely undermine that religion. In addition, denial of that belief will result in the affirming of a contrary belief and result in the establishment of an opposing religion.[42]

The court concluded that the use of the challenged textbooks by the school district was a violation of the establishment clause of the First Amendment to the United States Constitution. An order was issued enjoining the use of the textbooks in the state of Alabama (see Appendix D).

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[41]Ibid., p. 981. [42]Ibid., p. 987.

Justice Hand is not a newcomer to the complex arena of church and state relations. In 1983, he expressed support for returning prayer and meditation to the public school classrooms, but was later overruled by the U.S. Supreme Court.[43] In Smith,[44] the defendants have appealed to the Eleventh Circuit Court of Appeals. Ironically, even if the appeals court reverses the decision, the social studies and history textbooks will be removed from the classrooms. Luther Mitchell, spokesman for the Alabama Board of Education, stated that the books were up for review and would not be reapproved because they were too controversial.[45]

New Right attempts to establish a legal basis to confirm the existence of secular humanism in the public schools have not been restricted to the judicial branch of government. In 1978, Senator Orin Hatch, a Republican from Utah, succeeded in adding an amendment to an existing law intended to protect the families of those enrolled in federal public school programs from intrusive inquiries concerning sensitive personal matters. The Hatch Amendment guaranteed parental access to

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[43]Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd, 472 U.S. 37 (1985).

[44]Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Alabama 1987).

[45]Kim Putnam, "States and Publishers Deny Ill Effects from Alabama's Textbook Decision, But Changes May Be in the Future," Your School and the Law XVI, No. 8 (May 1987):2.

all instructional materials and curriculum information.[46] Furthermore, the law specified that students would not be required to submit to psychiatric or psychological examination, testing, or treatment for the purpose of gathering personal family data. The law was specifically limited to programs directly supported by federal dollars. When the United States Department of Education developed guidelines for implementing the amendment, controversy surfaced.

Phyllis Schlafly's Eagle Forum, the Maryland Coalition of Parents, and other advocates of the New Right have since used the Protection of Pupil Rights Amendment as a tool for purging the public schools of secular humanism. Parents were encouraged to complete and submit a form letter to their local school informing educators of their purported rights under the amendment (see Appendix E).[47] The letter contained a censorious list of activities such as drugs and alcohol, evolution, one world government, human sexuality, nuclear war, death education, and autobiographical types of assignments.

Federal Secretary of Education, William Bennett, a supporter of both the amendment and increased parental oversight in the nation's schools, reaffirmed that the guidelines

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[46]Anne Bridgman, "Groups Press Praent-Control Campaign, Get High-Level Support," Education Week 4, No. 22 (February 20, 1985):1.

[47]Ibid.

apply only to federally funded programs and not those in the regular curriculum.[48] Senator Hatch, in response to the broad interpretation given the amendment, commented that the purpose of the law was to "guarantee the right of parents to have their children excused from federally funded activities under carefully specified circumstances. . . . These activities are nonscholastic in nature."[49]

Censorship of Curricular Materials and Books

School officials charged with the responsibility of selection, purchase, and possible removal of student instructional materials and library books have been faced with an increasingly difficult task in recent years as a result of the growth of the New Right and other community groups who seek to influence the educational process. Since the advent of the 1970's, there has been more litigation concerning censorship in public schools than in any other era in American history. Court action tends to focus on the following issues:

> (1) academic freedom of public school teachers, (2) students' right to read, inquire and receive information, (3) school board authority to select and remove library and instructional materials, (4) parents' right to direct education of children, and (5) religious freedom of public school students as it relates to library and instructional materials.[50]

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[48]James Hertling, "Hatch Regulations Misinterpreted, Bennett Asserts," Education Week 4, No. 24 (March 6, 1985), il.

[49]Ibid. [50]Bryson and Detty, Censorship, p. 9.

Federal court cases litigated during the 1970's seemingly followed two divergent paths. "The less speech-protective path, represented by the Second Circuit's decision in Presidents v. Community School," alleges Sorenson "appeared to deny that removal of books from school libraries presented a constitutional issue, and that these problems were therefore not amenable to resolution by federal courts."[51] Another series of cases, best illustrated by Minarcini v. Strongsville City School District,[52] has applied the brakes to the removal of such materials as violative of the constitutional rights of students and teachers.

When the New York Civil Liberties Union sued the Community School Board in 1973, it marked the first time that a board of education had been sued specifically for banning books.[53] Down These Mean Streets, a book authored by Piri Thomas graphically portraying sexual and drug related activities in a Puerto Rican ghetto in Harlem, was banished by the school board after parents objected that the book "would have an adverse moral and psychological effect on 11 to 15 year old

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[51]Gail Paulus Sorenson, "Removal of Books from School Libraries 1972-1982: Board of Education v. Pico and its Antecedents," Journal of Law and Education 12, No. 3 (July 1983): 421.

[52]Minarcini v. Strongsville City School District, 384 F. Supp. 698 (N.D. Ohio 1974), aff'd in part, rev'd in part, 541 F. 2d 577 (6th Cir. 1976).

[53]Sneller, Censorship, p. 4.

children, principally because of the obscenities and explicit sexual interludes."[54] The plaintiffs suggested that the board action was an infringement on the rights of students to receive and read information. Judge Jacob Mishler of the United States District Court for the East District of New York dismissed the case without a hearing by affirming the authority of the school board to determine matters of education. The court also concluded that the removal of the book was not violative of First Amendment protection. In a unanimous decision, the Second Circuit Court of Appeals affirmed the decision of the lower court and insisted that "to suggest that the shelving or unshelving of books presents a constitutional issue, particularly where there is no showing of a curtailment of freedom of speech or thought, is a proposition we cannot accept."[55]

The book was reinstated to a reserve shelf in the libraries to be loaned on request to parents, but not students. When the United States Supreme Court refused to hear the case, Justice Douglas filed a dissenting opinion emphasizing the establishment of the First Amendment as a preferred right in the schools. He raised the following questions:

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[54]Presidents Council, Dist. 25 v. Community School Board No. 25, 457 F. 2d 289 (2d Cir.), cert. denied, 409 U.S. 998 (1972).

[55]Presidents Council, Dist. 25 v. Community School Board No. 25, 457 F. 2d 289 (2d Cir.), p. 293.

> What else can the School Board now decide it does not like? How else will its sensibilities be offended? Are we sending children to school to be educated by the norms of the School Board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to our world's problems?[56]

Cary v. Board of Education of the Adams-Arapahoe School District[57] carried the debate into the arena of the classroom when several high school teachers protested a board of education ban on ten books that had previously been utilized in elective language arts classes. A committee of students, teachers, parents, and administrators had recommended the banishment of one of the books, but nine other books got the axe after three members of the committee voiced concerns. In affirming the authority of the board of education to determine curriculum, the court concluded that the board acted within its authority in removing the books even though the personal views of the board members might have been involved. The assertion by the teachers that their constitutional rights had been waived by a collective bargaining agreement was rejected by the court. In suggesting that the rights of the teachers and the authority of the school board must be balanced, Justice Logan emphasized that the decision did not prohibit teachers from mentioning these books in class "as

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[56]Presidents Council, Dist. 25 v. Community School Board No. 25, 409 U.S. 998 (1972), p. 999.

[57]Cary v. Board of Education of the Adams-Arapahoe School District, 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F. 2d 535 (10th Cir. 1979).

examples of contemporary poetry, literature or American masters."[58]

In a decision of the United States Circuit Court of Appeals for the Second Circuit, the removal of two books from a school library was upheld on the basis that the action did not violate the First Amendment rights of the plaintiffs.[59] The removal arose as a result of protests from parents about the vulgar and indecent language in two books, The Wanderer's by Richard Price and Patrick Mann's Dog Day Afternoon. Upheld in the court action was school board power to remove obscene material and to screen future library acquisitions. Ironically, Pico[60] was decided by the same three justices on that same day, but with a different opinion.

In Zykan v. Warsaw Community School Corporation,[61] action was brought by high school students and former high school students alleging that actions of the school board represented a violation of protected First and Fourteenth Amendment rights. The challenged practices included "removing certain books from English courses and the library of the high school, eliminating certain courses from the English

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[58]Cary v. Board of Education of the Adams-Arapahoe School District, 598 F. 2d 535 (10th Cir. 1979), p. 544.

[59]Bicknell v. Vergennes Union High School Board of Directors, 638 F. 2d 438 (2d Cir. 1980).

[60]Pico v. Board of Education, Island Trees Union Free School District No. 26, 638 F. 2d 404 (2d Cir. 1980).

[61]Zykan v. Warsaw Community School Corporation, 631 F. 2d 1300 (7th Cir. 1980).

curriculum, and failing to rehire certain English teachers."[62] In ruling for the defendants, Justice Allen Sharp affirmed the authority of the school board to determine what textbooks, library books, and curricular materials to use in the school. On appeal, Justice Cummings of the Seventh Circuit Court of Appeals vacated the decision of the lower court and remanded with instructions. The court did note the following:

> This is not to say that an administrator may remove a book from the library as part of a purge of all material offensive to a single, exclusive perception of the way of the world, anymore than he or she may originally stock the library on this basis. Nor can school authorities prohibit students from buying or reading a particular book or, under most circumstances, from bringing it to school and discussing it there.[63]

Alleging that such was not the case in this situation, Justice Cummings sided with the defendants. Other courts have followed a different philosophical interpretation and have more quickly ruled in favor of the constitutional rights of students and teachers. Attention will now be focused on these cases.

In a 1970 case, Parducci v. Rutland,[64] a high school teacher brought action against the school district seeking damages and injunctive relief after she had been dismissed for assigning an allegedly disruptive story to her students. Marilyn Parducci ignored the admonishments of the principal and associate superintendent by continuing to teach Kurt

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[62]Ibid. [63]Ibid., p. 1308.

[64]Parducci v. Rutland, 316 F. Supp. 352 (M.D. Ala. 1970).

Vonnegut's Welcome to the Monkey House and subsequently was fired. Upon reviewing the book, the court could find no obscene material. Stating that the school had failed to prove the inappropriateness of the book, the court ruled in favor of the plaintiff, since no disruption of the educational process had been created.

In Minarcini v. Strongsville City School District,[65] the Sixth Circuit Court of Appeals handed down the first school censorship ruling that upheld the right of students to receive information.[66] Refusal by the local school board to purchase Kurt Vonnegut's God Bless You, Mr. Rosewater and Catch 22 by Joseph Heller and a decision to remove the latter and another Vonnegut selection, Cat Cradle, resulted in litigation against the school district alleging a violation of First and Fourteenth Amendment rights. The actions of the school board had been predicated on parental concerns that the books contained too much profanity and frequently made references to sexual acts. Justice Edwards, in writing the majority opinion, affirmed the right of the board to use its own discretion in determining which books should be purchased by the school district. The court also stated that the school was not compelled by law to establish a library at the school. If the board did, however, make such a decision,

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[65]Minarcini v. Strongsville City School District, 541 F. 2d 577 (6th Cir. 1976).

[66]Bryson and Detty, Censorship, p. 121.

then it could not place conditions on its use based on the political or social views of the board members. Referring to the library as a "storehouse of knowledge,"[67] Justice Edwards concluded that once library books were purchased and shelved, they could only be removed for reasons permitted under the federal Constitution.

Male and Female Under 18, a collection of poetry and prose purchased by the Chelsea schools, was banned from the school library in 1977 after a poem in the anthology was found to contain language that was objectionable and "outright obscene."[68] The Right to Read Defense Committee sought an injunction to return the book to the library shelves on the grounds that removal constituted a violation of the First Amendment rights of parents and students. Justice Tauro affirmed the right of the school committee to select and purchase books, but in following the Minarcini[69] precedent, he held that the school district acted unjustly in removing the anthology. Concern was expressed at the possibility of successive school committees banning materials based on the particular views of its members.

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[67]Minarcini v. Strongsville City School District, 541 F. 2d 577 (6th Cir. 1976), p. 581.

[68]Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978), p. 707.

[69]Minarcini v. Strongsville City School District, 384 F. Supp. 698 (N.D. Ohio 1974), aff'd in part, rev'd in part, 541 F. 2d 577 (6th Cir. 1976).

In a 1979 case, a New Hampshire school board voted to remove MS magazine from the school library because of subject matter dealing with gay rights and lesbianism and advertisements for contraceptives.[70] The federal district court, relying on the Minarcini[71] and Right to Read[72] cases, held that First Amendment rights were implicated, thus requiring a legitimate and substantial governmental interest for removal. The court ruled that the political tastes of the board members and not legitimate educational considerations such as architectural necessity or obsolescence were the motivating factors in removal. The court thus held that the board should resubscribe to the magazine and restore back issues to the shelves.

With the advent of the 1980's, two cases, Pratt[73] and Pico,[74] emerged that have become guidelines for school administrators and school boards to follow in preventing "political and religious pressure groups to co-opt policy and

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[70] Salvail v. Nashua Board of Education, 469 F. Supp. 1269 (D.N.H. 1979).

[71] Minarcini v. Strongsville City School District, 541 F. 2d 577 (6th Cir. 1976).

[72] Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978).

[73] Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982).

[74] Board of Education, Island Trees Union Free School District No. 26 v. Pico, 474 F. Supp. 387 (E.D.N.Y. 1979), rev'd and remanded, 638 F. 2d 404 (2d Cir. 1980), aff'd, 475 U.S. 853 (1982).

curriculum desecration."[75] In the first case, a Minnesota school board received a significant number of complaints about the use of a film, "The Lottery," and its accompanying trailer film. The films, written by Shirley Jackson and produced by Encyclopedia Britannica Educational Corporation, depicted a small town in which one citizen each year was randomly selected to be stoned to death. In February, 1978, approximately fifty parents gathered to view the films and hear teachers explain why they were important to the American literature courses. Three parents later filed a formal complaint with the school board requesting removal from the curriculum because the purpose of the film was to create "the breakdown of family values and tradition."[76] Parents also asserted that the films contained excessive violence and brutality and maintained that the "films may cause students to 'begin to question their own family loyalties.'"[77] The following month a recommendation was made by a review committee to discontinue use of the controversial films at the junior high level, but to include the films in the senior high curriculum. Parents were to be given the option of requesting that their children be excused from the assignment.

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[75] Bryson and Detty, Censorship, p. 205.

[76] Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982), p. 774.

[77] Ibid.

The local school board, however, rejected the suggestion of the Committee for Challenged Materials and voted to exclude the film from the entire curriculum. When legal action was brought against the district, the federal district court held that the removal of the film from the curriculum was unconstitutional. On appeal, the United States Court of Appeals for the Eighth Circuit upheld the lower court decision and insisted that the action of the school board had been based on "ideological and religious reasons."[78] Such a decision was a violation of the First Amendment free speech rights of students because it posed an interference with the students' rights to receive information. The school board was unable to demonstrate that it had a compelling state interest in banning the films. "If these films can be banned by those opposed to their ideological theme," asserted Justice Heaney, "then a precedent is set for the removal of any such work."[79]

Pico[80] began when three members of the school board of Island Trees Union Free School District returned from a conference sponsored by a New Right conservative organization known as Parents of New York United (PONYU). Using a list of materials deemed objectionable by PONYU, the school board

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[78]Ibid., p. 776. [79]Ibid., p. 779.

[80]Board of Education, Island Trees Union Free School District No. 26 v. Pico, 474 F. Supp. 387 (E.D.N.Y. 1979), rev'd. and remanded, 638 F. 2d 404 (2d Cir. 1980), aff'd, 475 U.S. 853 (1982).

members investigated the holdings of the school system and discovered that several of those books were present in either the school libraries or on approved reading lists for students. Ignoring the advice of the superintendent, the board ordered principals to deliver the questionable materials to the central office for further examination and review. Excerpts were examined from the books and the school board was alarmed at the findings. Strenuous objections were voiced to passages from A Hero Ain't Nothing But a Sandwich by Alice Childress because of obscene language and profanity. Sexual passages were the point of objection in Go Ask Alice. A clinical discussion of sexual intercourse in The Naked Ape by Desmond Morris was held to be inappropriate. Passages from Kurt Vonnegut's novel, Slaughter House Five, were alleged to be un-Christian because of passages which denigrated the character of Jesus. Other books to which the board objected included the following: (1) Down These Mean Streets by Piri Thomas, (2) Best Stories by Negro Writers by Langston Hughes, (3) Laughing Boy by Oliver Lafarge, (4) Black Boy by Richard Wright, (5) Soul on Ice by Eldridge Cleaver, (6) A Reader for Writers by Jerome Archer, and (7) The Fixer by Bernard Malomud.[81]

The school board subsequently appointed a review board of four parents and four staff members, but later rejected

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[81] Ibid.

their recommendations without explanation. A decision was made to remove nine books from the curriculum, return another to the library shelves, and make one other book available with the permission of parents.

Alleging that the board actions had been based on the political, moral, and social tastes of board members, Steven Pico and others sued in federal district court on grounds that their First Amendment rights had been violated. When the trial court granted summary judgment for the board, an appeal was made to the Second Circuit Court of Appeals. The district court's decision was reversed as Justice Sifton, in questioning the motives of the school board, noted that an "unusual and irregular intervention"[82] in the operation of the school library had taken place. The United States Supreme Court agreed to grant certiorari.

Two important issues were identified by the Court: (1) Does the First Amendment place limitations on the discretion of school boards to banish books from school libraries?, (2) If there are limitations, did the actions of the Island Trees school board exceed its constitutional authority?[83] In a narrow five to four decision, with Justices Brennan, Marshall, Stevens, Blackmun, and White forming the

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[82]Pico v. Board of Education, Island Trees Union Free School District, 638 F. 2d 404 (2d Cir. 1980), p. 414.

[83]Board of Education, Island Trees Union Free School District No. 26 v. Pico, 475 U.S. 853 (1982), p. 863.

majority, the Court extended the rights of students to receive information and asserted that the removal of books from school libraries constitutes an infringement on the rights of students when the removal is based on the personal or political beliefs of school board members.

Justice William J. Brennan, writer of the majority opinion, affirmed the substantial authority of the school board, but asserted that students do not give up their constitutional rights at school, "therefore school boards must discharge their 'important, delicate, and highly discretionary functions' within the limits and constraints of the First Amendment."[84] The broad discretion of the school board must not be tainted by partisan, political or personal views. Justice Brennan explained that it would be necessary to determine if the board attempted to suppress ideas in order to evaluate whether the removal decision was constitutional. The Court concluded that there was substantial evidence to indicate that board members acted in an unconstitutionally permitted manner by allowing their own personal values and beliefs to influence the removal decision. It was noted that the board, in the absence of a clearly defined procedure, nevertheless rejected the recommendations of both the superintendent and an appointed book review committee. Board members could not deny that the actions were initiated after board members reviewed a list of

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[84]Ibid., p. 865.

objectionable books distributed by a politically conservative organization. Stating that the book removal action was extremely irregular, the Supreme Court ruled against the board of education.

It must be emphasized that the scope of this decision is limited to the issue of removal of library books, and does not apply to all instructional materials and textbooks that might be used in the classroom. Justice Brennan's opinion suggested that the school library, not the classroom, was the primary area for intellectual growth and development and it was there that the environment was "especially appropriate for the recognition of the First Amendment rights of students."[85]

The distinction between the classroom and the library was rejected by Justice Harry Blackmun and the dissenting Justices. Whereas Justice Blackmun maintained that constitutional protections were equally important in all areas of the school, Justice Powell claimed that the right to receive ideas was even more important in the classroom than in the library.[86] Members of the dissent also expressed, though for different reasons, concerns about the distinctions drawn between selection and elimination processes.

In summation, the judicial system has been inconsistent in dealing with cases of alleged censorship. Typically,

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[85]Ibid., p. 868. [86]Ibid.

courts have acknowledged both the authority of school boards to establish curriculum and purchase materials, as well as the rights of students to constitutionally protected freedoms. Interpretations concerning the right of students to read and receive information have been plagued with inconsistencies.

Rulings in President's Council,[87] Cary,[88] Bicknell,[89] and Zykan[90] tend to give preference to the authority of the board of education over the rights of students. On the contrary, court decisions in Parducci,[91] Minarcini,[92] Right to Read,[93] Salvail,[94] and Pratt[95] have placed emphasis on

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[87]Presidents Council, Dist. 25 v. Community School Board No. 25, 457 F. 2d 289 (2d Cir.), cert. denied, 409 U.S. 998 (1972).

[88]Cary v. Board of Education of the Adams-Arapahoe School District, 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F. 2d 535 (10th Cir. 1979).

[89]Bicknell v. Vergennes Union High School Board of Directors, 475 F. Supp. 615 (D. Vt. 1979), aff'd, 638 F. 2d 438 (2d Cir. 1980).

[90]Zykan v. Warsaw Community School Corp., 631 F. 2d 1300 (7th Cir. 1980).

[91]Parducci v. Rutland, 316 F. Supp. 352 (M.D. Ala. 1970).

[92]Minarcini v. Strongsville City School District, 384 F. Supp. 698 (N.D. Ohio 1974), aff'd in part, rev'd in part, 541 F. 2d (6th Cir. 1976).

[93]Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978).

[94]Salvail v. Nashua Board of Education, 469 F. Supp. 1269 (D.N.H. 1979).

[95]Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982).

protecting the First Amendment rights of students. Pico,[96] though ruling in favor of First Amendment protections, showed the lack of unanimity on the Supreme Court in a very narrow decision.

From this exercise of balancing the interests and rights of students and school boards, it can be concluded that if First Amendment values are implicated, the school board should be able to demonstrate that any removal action had a compelling governmental interest and was not based on personal or political ideas held by school board members. Failure to do so may likely result in a violation of the First Amendment rights of students.

Evolution-Creation Science Controversy

Controversies focusing on religious instruction in the public schools often concern the teaching of evolution and scientific creationism. The conflict about the Biblical and Darwinian accounts of the origins of man have typically involved the following issues: (1) attempts to ban the teaching of evolution, (2) legislative enactments requiring teachers to give equal treatment to the Genesis account, and (3) efforts to attach disclaimer statements to evolutionary instruction to ensure that it is taught as a theory and not

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[96]Board of Education, Island Trees Union Free School District No. 26 v. Pico, 474 F. Supp. 387 (E.D.N.Y. 1979), rev'd and remanded, 638 F. 2d 404 (2d Cir. 1980), aff'd, 457 U.S. 853 (1982).

as scientific fact. A review of the litigious history of the issues will provide clarity of the constitutional imperatives that relate to public schools.

The widely debated Tennessee case of Scopes v. State[97] became the earliest judicial test of a state mandated anti-evolution statute. It stated the following:

> It shall be unlawful for any teacher in any of the Universities, normals and all other public schools of the state . . . to teach any theory that denies the story of the divine creation of man as taught in the Bible and to teach instead that man has descended from a lower order of animals.[98]

John Scopes, a biology teacher, was criminally prosecuted for violating the statute. The celebrated "monkey trial" brought together a former presidential nominee, William Jennings Bryan for the prosecution, and his adversary, Clarence Darrow for the defense. Upon conviction, Scopes appealed to the Tennessee Supreme Court which reversed the decision on a technicality, but upheld the constitutionalitiy of the law. Since Scopes was no longer employed by the school system, the court reasoned that the business of the state would be better served by moving on to more productive matters. The Tennessee statute at issue in the case remained as the law for almost forty years.

A year after the Scopes trial concluded, Arkansas enacted an anti-evolution statute modeled on the law upheld in

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[97]Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927).

[98]Sorenson and Fischer, "Creationism," p. 26.

Tennessee. Public school teachers were thereby prohibited from teaching or using materials that taught "the theory or doctrine that mankind ascended or descended from a lower order of animals."[99] Susan Epperson, a Little Rock biology teacher, was faced with the dilemma that if she used a new biology textbook she would presumably teach a chapter in the book on Darwinian evolution and thus be subject to dismissal or criminal prosecution. She initiated action in the state Chancery Court requesting that the statute be voided. Chancellor Murray Reed held that the Arkansas law was a violation of the Fourteenth Amendment to the United States Constitution, but on appeal the Supreme Court of Arkansas reversed the decision and affirmed the authority of the state to specify curriculum in the public schools. The United States Supreme Court, however, reversed that decision and stated that the statute was contrary to the intent of the First Amendment because it had as its purpose the advancement of religion. Justice Abe Fortas, in writing the majority opinion, concluded that the statute had been enacted "for the sole reason that evolution is deemed to conflict with . . . a particular interpretation of the Book of Genesis by a particular religious group."[100] In rendering a decision, the Court had considered the following:

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[99]Epperson v. Arkansas, 393 U.S. 97 (1968), p. 98.

[100]Ibid., p. 103.

> [T]he religious nature of the public appeal that had been made on behalf of the statute, the lack of any other policy justifications for the statute, and expert testimony to the effect that the purpose of the statute was an ideological one involving "an effort to prevent (by censorship) or punish the presentation of intellectually significant matter which contradicts accepted social, moral or religious ideas."[101]

In Wright v. Houston Independent School District,[102] a group of parents and students sought to prohibit the teaching of evolution. The court, using the three part establishment clause test, ruled that instruction about evolution did not imply a religious purpose, promote religious beliefs, or excessively entangle government in religion. The plaintiffs next argued that if evolution was to be taught, then the creation account of the origin of man should be taught as well. The court, however, ruled that such a requirement to teach all theories of the origin of man "would be unwarranted intrusion into the authority of the public school to control the academic curriculum."[103]

Another strategy for opposing the teaching of Darwinian concepts has been to require educators and textbooks to qualify evolution as a theory rather than scientific law. The court addressed this issue in Daniel v. Waters,[104] a 1973

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[101] Sorenson and Fischer, "Creaonism," p. 29.

[102] Wright v. Houston Independent School District, 366 F. Supp. 1208 (S.D. Texas 1972), 486 F. 2d 137 (1973).

[103] Wright v. Houston Independent School District, 486 F. 2d 137 (1973), p. 138.

[104] Daniel v. Waters, 399 F. Supp. 510 (H.D. Tenn. 1975), 515 F. 2d 485 (6th Cir. 1975).

Tennessee case that challenged a state law granting preferential treatment to the Genesis account of creation. While not prohibiting the teaching of evolution, the Tennessee statute stipulated that if evolution was taught, then creationism should be given balanced and equal treatment. In practice, instruction in evolution was required to disclaim it entirely as a theory, while the statute exempted the creation story in Genesis from such a disclaimer on the basis that the Bible was a reference book, not a textbook. Justice Edwards of the Sixth Circuit Court of Appeals expressed hesitancy about intervening in the daily operation of the schools, but asserted that such action must be taken if statutes and regulations infringe upon the constitutionally protected rights of American citizens. The court further affirmed that the government "may not aid, foster, or promote one religion or religious theory against another"[105] and thus concluded that the statute at issue was violative of the establishment clause of the First Amendment.

In a 1981 California case, Kelly Segraves filed a complaint in the Sacramento Superior Court charging that the teaching of evolution was an unconstitutional establishment of religion.[106] Segraves, co-author of The Creation

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[105]Daniel v. Waters, 515 F. 2d 485 (6th Cir. 1975), p. 490.

[106]Segraves v. State of California, No. 278978 (Cal. Super. Ct. 1981).

Explanation: A Scientific Alternative to Evolution, summarized his position as follows:

> Neither evolution nor creationism is purely scientific. They are both philosophically founded, and both are part science and part religion. Once you start getting into origins, you are out of the realm of science. At that point, it becomes philosophical, interpretational, a belief system. We are saying the state board cannot set policy that mandates a belief system.[107]

The litigation was based on charges that state promulgation of evolutionary theory constituted an establishment of religion which resulted in indoctrination, not education of students. It was alleged that Christian teachers were required to teach evolution in opposition to their personal beliefs, thus their academic freedom was abrogated.

The trial opened on March 2, 1981, with a shocking request by the plaintiff's attorney to narrow the scope of the charges. Judge Irving Perluss was left only to decide if the language in the state science curriculum was offensive to Segraves' sincerely held beliefs. The court expressed concern that "what I visualized as a great constitutional case has evolved itself into--excuse me, come down to--a question of semantics."[108]

In what was referred to as "a long road to a little house,"[109] Judge Perluss issued a judgment in favor of the state. He asserted that the religious freedom of the plaintiff

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[107] Arnstine, "The Academy," p. 17.

[108] Ibid. [109] Ibid., p. 18.

had not been violated by the state's science curriculum and thus no changes were required in the terminology of the Science Framework. The court did, however, order the California State Board of Education to circulate copies of the 1973 policy stressing that evolution not be taught as fact, but as scientific theory.

The McLean v. Arkansas Board of Education[110] litigation in 1982 probed much more deeply into the salient issues in teaching both evolution and scientific creationism. Twenty-three plaintiffs coalesced to file charges alleging violation of the First Amendment requirement for separation of church and state. The action was focused on a 1981 Arkansas statute requiring "balanced treatment of creation science and evolution science"[111] in all classrooms of the public schools.

The court, in applying the tripartite test, first ruled that the statute had the impermissible purpose of endorsing religion. In reaching this decision, the court examined the motivation of the sponsors of the law, the long history of opposition to instruction in evolution in Arkansas, and the expedient manner in which the bill was enacted. Justice William Overton asserted that the passage of Act 590 was merely an attempt to require instruction concerning the Genesis account of creation under the ruse of science. Since scientific

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[110] McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (E.D. Ark. 1982).

[111] Ibid.

creationism was religion, and requiring instruction about religious doctrine was illegal, the court reasoned that the statute served as an advancement of religion. The court examined evidence that purportedly supported the scientific status of creationism. A conclusion was reached that its principles failed to satisfy the following criteria of scientific theory: "(1) guidance by natural law; (2) reference to natural law to explain phenomena; and (3) offering of tentative hypotheses subject to empirical verification."[112] The court concluded by alleging that the statute failed the establishment clause test by unduly entangling public school officials in religion.

A landmark case concerning balanced treatment statutes was heard by the United States Supreme Court in 1987.[113] The story began when the Louisiana legislature passed a law entitled the "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction." The statute specified that instruction on the origins of man would not be required in any public school. If, however, such instruction was given, it must include the teaching of both evolution and creation science. Parents, teachers, and several religious

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[112]Benjamin B. Sendor, "The Role of Religion in the Public School Curriculum," School Law Bulletin XV, No. 3 (July 1984):8.

[113]Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), reh. denied 779 F. 2d 225 (5th Cir. 1985), jurisdiction noted 106 S. Ct. 1946 (caseno. 85-1513, 1987).

leaders joined together to challenge the law as a violation of the state and federal constitutions. Upon appeal, it was determined that the Louisiana Constitution was not at issue. Both the district court and the United States Court of Appeals for the Fifth Circuit concluded that the statute was intended to promote religion and was thus violative of federal law. The contention of the state, that the law was intended to promote academic freedom, was rejected. Justice Jolly asserted that the teaching of scientific creationism was a veiled attempt to "discredit evolution by counterbalancing its teaching."[114]

The Supreme Court, in a seven to two decision, affirmed the lower court judgment and ruled that the clear intent of the Louisiana legislature was to "advance the religious viewpoint that a supernatural being created humankind."[115] Justice William Brennan, writer of the majority opinion, thought it much too coincidental that the statute dealt with "the one scientific theory that historically has been opposed by certain religious sects."[116] The Court examined the case in light of all aspects of the tripartite test and concluded the statute failed to meet constitutional muster on all

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[114]Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), p. 1257.

[115]Tom Mirga, "Creationism Law in Louisiana is Rejected by Supreme Court," Education Week 6, No. 39 (June 24, 1987):1.

[116]Ibid., p. 6.

counts. Justice Antonin Scalia expressed amazement in a dissenting opinion. He asserted that the Supreme Court had no basis for questioning the motives of the Louisiana legislators who enacted the law in support of academic freedom.

A review of the case law concerning the controversy over the teaching of evolution and creationism reveals a high level of consistency throughout the court system. Courts have rigorously denied attempts to exclude instruction on evolution from the public school curriculum. Such attempts have been regarded as "religiously motivated instrusions into the curriculum, in violation of the establishment clause."[117] Courts have attempted to clearly define the distinction between scientific theory and religious doctrine. Science is built on the belief that hypotheses should be developed based on systematic observation of activities of the natural world. Careful refinement of these hypotheses and the resultant conclusions attempt to define and develop human knowledge. Scientists, however, admit that their propositions are always susceptible to additional testing. Creationists, in contrast, "start with a preconceived idea--that the Genesis account of creation is ultimate truth--and then try to arrogate scientific methods to support their unquestioned initial assumption."[118] This approach differs from the scientific

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[117]Sendor, "The Role," p. 8.

[118]Hollowell, "A Critical Analysis," p. 165.

method because it denies that any original belief or idea can be changed by the addition of new data.

Supporters of scientific creationism, thwarted in litigious attempts to have the Genesis account validated as science, have thus tried the opposite approach of having evolution declared a religion. Courts have been unwilling to accept this contention and have reaffirmed the practice of teaching secular theories. The courts have concluded that "the bare fact of conflict between secular and religious views on the same issue does not transform the secular theory into secular humanist religious doctrine."[119]

Religious Practices

Congressional attempts to legislate prayer in the classroom have been prevalent for more than twenty years. In the 1960's, Congressman Frank Becker of New York and later, Senator Everett Dirksen of Illinois, led the most serious efforts to accomplish this task. Both the Dirksen Amendment and the Becker Amendment were "designed 'to permit voluntary participation in prayer in public schools,'" contends Wood, "although this was later broadened in the Dirksen Amendment, to include 'any public building.'"[120] In 1971 a prayer

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[119]Sendor, "The Role," p. 8.

[120]James E. Wood, Jr., "Religion and Education: A Continuing Dilemma," Annals of the American Academy of Political and Social Science 446 (November 1979):69.

amendment failed to receive the required two-thirds majority in the House of Representatives.

Undaunted by these failures, conservatives continued to exert pressure on the Congress to enact favorable prayer legislation. Senator Jesse Helms of North Carolina, in 1979, failed in an attempt to legislate a statute that would have limited the authority of the United States Supreme Court and all other federal courts to hear cases involving voluntary prayers in public buildings, including schools.[121]

The New Right achieved a greater degree of success when the 98th Congress convened in 1983. With an eye on the upcoming elections in 1984, the House of Representatives was eager to vote on a popular school prayer measure that might garner support from constituents. In a lopsided vote of 356-50, the House passed voluntary, silent prayer legislation that was part of the Gunderson Amendment.[122] This provision did not allow time for moments of organized silence or prayer, but simply affirmed the right of students to participate in "voluntary, silent prayer by saying that no state or school district could deny 'individuals in public schools the opportunity to participate in moments of silent prayer.'"[123] The House obviously confirmed an undeniable reality. A suggestion

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[121]Ibid.

[122]Moen, "The New Christian," p. 264. [123]Ibid.

by Congressman Dan Coats which recommended the removal of federal funds to states that sought to bar voluntary prayer was rejected.

In the Senate, the battle over a proposed constitutional prayer amendment created significant friction and debate between New Right leaders and opponents of the measure. Gary Jarmin of Christian Voice, and a contingent of other conservative leaders, approached Senator Orrin Hatch and encouraged him to push for the adoption of a prayer amendment. Believing that a "voluntary, aloud" amendment would never pass, Hatch drafted a proposal allowing equal access and silent prayer for religious groups. The New Right leaders were infuriated at the silent prayer proposal and reasoned correctly that they could always fall back on this proposal if a vocal prayer amendment could not be enacted.

The White House was anxious to propose a vocal prayer amendment and suggested the following terminology:

> Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or in other public institutions. No person shall be required by the United States or by any state to participate in prayer.[124]

The White House proposal had the support of most fundamentalist leaders such as Jerry Falwell and Pat Robertson, though some disagreements arose concerning appropriate strategy. The President's prayer amendment was referred to a

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[124]Ibid., p. 292.

subcommittee along with the previous proposal of Senator Hatch. Both measures were reported out of the subcommittee to the full Judiciary Committee. Senator Thurmond failed in an attempt to add to President Reagan's proposal. Likewise, Senator Howard Baker was unsuccessful in garnering support for his own amendment.

After much debate, it was the President's amendment that reached the floor of the Senate for a vote. The White House initiated a lobbying effort that included telephone calls to key Senate figures and speeches before groups such as the National Association of Evangelicals to enlist support. Television evangelists encouraged their viewers to bombard Capitol Hill with telegrams, letters, and telephone calls in support of the amendment. Conservatives obviously heeded this call to arms as substantiated by Senator John Danforth when he remarked, "With all the calls and the mail we're receiving, you would think this is the most important issue facing the country."[125] Prominent athletic figures such as Tom Landry, Roger Staubach, Joe Gibbs, and Meadowlark Lemon all appeared in Washington to testify before Senate committees in support of the prayer amendment. Proponents of the measure staged an all night vigil on March 5, 1984. Citizens gathered at the steps of the Capitol "to listen to pro-prayer speeches, to pray, and to sing patriotic and religious

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[125]Ibid., p. 304.

songs."[126] Prayer amendment supporters had mobilized and were eager to see passage of the measure that would signal a major victory for the New Right.

Meanwhile, anti-prayer groups like the American Civil Liberties Union, People for the American Way, and a variety of Lutheran, Methodist, and Jewish groups began to lobby, especially among moderate Republican leaders. Senator Lowell Weicker succeeded in stalling a final vote while anti-prayer groups mobilized. While attracting a majority of the votes, the proposed prayer amendment nevertheless fell eleven votes short of the required two-third majority and was thus defeated.[127]

Prayer controversies have not been restricted to the legislative branch of government. A plethora of judicial activity has dealt with topics such as prayer and Bible reading, the rights of religious groups to utilize school facilities, state statutes dealing with "moments of silence" in the classroom, and miscellaneous topics such as the display of religious symbols, distribution of religious literature, and Bible courses. When the United States Supreme Court removed Bible reading and organized prayer from the public schools in the 1960s, many issues were left unresolved. Attention will now be focused on recent judicial actions that have impacted the identified areas.

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[126]Ibid., p. 306. [127]Ibid., p. 312.

Disputes over various types of voluntary spoken devotional activities are especially controversial since free speech and religious liberties are both at issue. Courts have typically ruled against organized voluntary oral prayer both during the school day and at school sponsored extracurricular activities such as commencement exercises, pep rallies, assembly programs, athletic events, and announcements using the public address system.

In Florida, litigation persisted for almost a decade in an exceedingly complex case involving Bible reading and prayer, the distribution of Bibles by the Gideons, and a state law requiring that educators instill "Christian virtues" in students.[128] While the latter two issues were not clearly resolved, the court left little doubt that the practice of beginning each day with devotional activities that included prayer and the reading of the Bible was unconstitutional.

The United States Court of Appeals for the Fifth Circuit reached a similar verdict in a case challenging the authority of school officials at Repton High School to permit students to read devotional materials each morning using the school's public address system.[129] These activities had continued

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[128]Meltzer v. Board of Public Instruction of Orange County, Florida, 548 F. 2d 559, 577 F. 2d 311 (5th Cir. 1978), cert. denied, 439 U.S. 1089 (1979).

[129]Hall v. Board of School Commissioners of Conecuh County, 656 F. 2d 999 (5th Cir. 1981).

until litigated in spite of acknowledgments by the superintendent that he knew the practice was illegal. In the ruling, the court also struck down a Bible Literature course taught by a Baptist minister as an advancement of religion.

School sponsored activities which occur during the instructional day but do not require compulsory attendance are not immune from the law as Arizona officials discovered. Student Council members at Chandler High School routinely scheduled assemblies which opened with prayer. Alternative activities were provided for students not wishing to attend. Citing that the practice failed all aspects of the tripartite test, Justice Tang of the United States Court of Appeals for the Ninth Circuit, ascertained that the prayer activities were violative of the rights of the plaintiff as specified in the establishment clause of the First Amendment.[130]

In Karen B. v. Treen, Justice Charles Clark stated:

> Prayer is an address of entreaty, supplication, praise, or thanksgiving directed to some sacred or divine spirit, being, or object. That it may contemplate some wholly secular objective cannot alter the inherently religious character of the exercise.[131]

The court proceeded to strike down a Louisiana statute and a Jefferson Parish School Board policy that established guidelines for student participation in prayer at school.

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[130]Collins v. Chandler Unified School District, 470 F. Supp. 959 (D. Ariz. 1979), 644 F. 2d 759 (9th Cir. 1981), cert. denied, 454 U.S. 863 (1981).

[131]Karen B. v. Treen, 653 F. 2d 897 (5th Cir. 1981), p. 901.

Both Graham[132] and Doe[133] confirm that organized spoken prayer is not permissible at extracurricular events that occur after the close of the instructional day. In the latter case, a prayer calling upon God for divine intervention and assistance was posted at the entrance to the school gymnasium. Additionally, the prayer was frequently recited or sung at graduation activities, athletic events, and pep rallies, often with the accompaniment of the school band. The trial court concluded that the practice had no secular purpose and was clearly an advancement of religion. Since school employees were present to supervise the activities, excessive entanglement was also created.

In Graham,[134] the after-school activities being challenged were the annual commencement exercises at Central Decatur High School that included a Christian invocation and benediction given by a local minister. The school district attempted to add legitimacy to the practice by shifting sponsorship of the graduation to a local coalition of ministers. When the pastor who was scheduled to give the next invocation and benediction admitted that the intent was entirely

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[132]Graham v. Central Community School District of Decatur County, 608 F. Supp. 531 (D.C. Iowa 1985).

[133]Doe v. Aldine Independent School District, 563 F. Supp. 883 (S.D. Texas 1982).

[134]Graham v. Central Community School District of Decatur County, 608 F. Supp. 531 (D.C. Iowa 1985).

religious, the court had little difficulty in ruling the practice illegal as an advancement of religion.

These rulings appear to be consistent with Abington School District v. Schempp,[135] a 1963 Supreme Court decision that struck down a Pennsylvania law that required the reading of ten verses from the Bible each day in school. The High Court ruled that the First Amendment rights of individuals would be contravened if the purpose or primary effect of instruction either inhibited or advanced religion.

Another landmark decision by the United States Supreme Court, Engel v. Vitale,[136] ruled that the required recitation of a prayer by students which had been composed by the state board of regents was unconstitutional. In writing the majority opinion, Justice Hugo Black noted that a primary motive for the colonization of America was to escape from governmentally written prayers in Europe and England. He further concluded that as governmental institutions, public schools should not use their authority to influence or control the types of prayers that citizens might pray.[137]

The more recent cases cited above indicate that some school boards and administrators have not adequately heeded the mandates of the Supreme Court. Individual districts have

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[135]Abington School District v. Schempp, 374 U.S. 203 (1963).

[136]Engel v. Vitale, 370 U.S. 421 (1962). [137]Ibid.

been guilty of mandating or condoning unconstitutional devotional activities. School teachers in Mobile County, Alabama, continued to lead their students in the recitation of the Lord's Prayer and three common blessings on the assertion that the "Supreme Court has misread history regarding the First Amendment and has erred by holding that the First Amendment is made applicable to the states through the Fourteenth Amendment."[138] The United States Court of Appeals for the Eleventh Circuit ruled that it was the teachers who erred, not the United States Supreme Court.[139]

More recent controversies have focused on silent prayer in the nation's classrooms. While the freedom of students to engage in silent prayer has not been challenged, disputes have centered on the constitutionality of various state laws requiring or suggesting daily periods of silence to be used for meditation. In 1981, a New Mexico statute was enacted into law permitting a period of silence for "contemplation, meditation or prayer."[140] A Tennessee statute the following year allocated time for "prayer, meditation, or personal beliefs."[141] The West Virginia legislative body approved a

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[138]Jaffree v. Board of Education, 554 F. Supp. 1104 (S.D. Ala. 1983).

[139]Wallace v. Jaffree, 705 F. 2d 1526 (11th Cir. 1983).

[140]Duffy v. Las Cruces Public Schools, 557 F. Supp. 1013 (D.N.M. 1983).

[141]Beck v. McElrath, 548 F. Supp. 1161 (MD.. Tenn. 1982).

bill permitting a period of silence for "contemplation, meditation, or prayer."[142] Alabama enacted similar legislation in 1981. While numerous states have passed silent prayer or moment of silence statutes, many of them have been declared unconstitutional under the establishment clause.

In New Mexico the legislation was clearly intended to institute prayer in the schools because evidence indicated that the idea for the law arose when a state legislator approached a top official in the state department of education to request that he draft such a bill. Judge Burciaga ruled that the inclusion of the terms "contemplation" and "meditation" in the legislation was a "transparent ruse meant to divert attention from the statute's true purpose."[143]

The outcome of Beck v. McElrath[144] was based on a similar premise that the Tennessee legislation was never intended to be neutral. Sponsors of the bill acknowledged that a majority of the citizens of the state favored a prayer amendment and that became a motivating factor in approving the legislation. Citing a violation of the establishment clause, the trial court declared the statute unconstitutional.

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[142]Walter v. West Virginia Board of Education, 610 F. Supp. 1169 (D.C.W.Va. 1985).

[143]Duffy v. Las Cruces Public Schools, 557 F. Supp. 1013 (D.N.M. 1983), p. 1019.

[144]Beck v. McElrath, 548 F. Supp. 1161 (M.D. Tenn. 1982).

Justice Hallahan struck down a West Virginia statute on the grounds that the state was impermissibly in the position of sponsoring prayer and therefore advancing religion.[145] The court proceedings were marked by extensive hearings in which students who were not members of the Christian faith testified about experiences in which they were subjected to ridicule and harassment.

New Jersey legislators, cognizant of the aforementioned adverse judicial rulings, couched the language of their new law in more subtle terminology. Conspicuously absent from the statute were the words "prayer" and "meditation."[146] The law provided that educators across the state at all grade levels should allow students to observe a moment of silence prior to the start of classes for "quiet and private contemplation or introspection."[147] A split three judge panel in the United States Court of Appeals for the Third Circuit ruled that the law violated the establishment clause because the statute lacked a clearly secular purpose. Students, parents, and teachers who originally challenged the law contended that in view of the withdrawal from the suit by the New Jersey Senate and General Assembly, individual legislators could not

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[145]Walter v. West Virginia Board of Education, 610 F. Supp. 1169 (D.C.W.Va. 1985).

[146]May v. Cooperman, 572 F. Supp. 1561 (1983), 780 F. 2d 240 (3rd Cir. 1985).

[147]Ibid.

pursue the case any further. The United States Supreme Court has agreed to rule on whether or not to uphold the lower court's ruling on the basis of this technicality.

Due to the considerable degree of activity in the lower federal courts, the Supreme Court consented to rule on the constitutionality of an Alabama silent prayer law in Wallace v. Jaffree.[148] Alabama had enacted separate prayer laws in 1978, 1981, and 1982. Whereas the 1978 statute provided for a one minute period of silence for "meditation," the 1981 measure specified the time was to be used for "meditation or voluntary prayer."[149] Two years later, the legislature granted permission to teachers in the public schools to lead willing students in a prayer of their choice or they could recite instead a prayer prescribed by the legislature.

When the district court dismissed Jaffree's complaint, the case was taken up by the United States Court of Appeals for the Eleventh Circuit. The appellate court declared both the 1981 and 1982 statutes to be a violation of the establishment clause. In affirming the ruling of the appellate court, the Supreme Court reasoned that the Alabama law was enacted for the sole purpose of returning prayer to public schools. The Court asserted, however, that the constitutionality of the 1978 statute was not at issue.

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[148]Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd, 472 U.S. 37 (1985).

[149]Ibid.

Justice John P. Steven's opinion implied that a moment of silence statute or policy worded and implemented "to refer only to meditation and adopted for at least some genuine secular purpose (such as beginning the day with solemnity or thoughtfulness), would be constitutional."[150] A statute adopted solely for religious purposes or one enacted that refers only to prayer as an acceptable practice during a moment of silence would not pass constitutional muster. Justice Sandra Day O'Connor stated that "During a moment of silence, a student who objects to prayer is left to his or her own thoughts, and is not compelled to listen to the prayers or thoughts of others."[151] Justice O'Connor further stated that "It is difficult to discern a serious threat to religious liberty from a room of silent, thoughtful schoolchildren."[152]

Justice William Rehnquist, in a lengthy and scathing dissenting opinion, asserted the following:

> It would come as much of a shock to those who drafted the Bill of Rights as it will to a large number of thoughtful Americans today to learn that the Constitution, as construed by the majority, prohibits the Alabama legislature from 'endorsing' prayer.[153]

President Reagan and leaders of the New Right expressed dismay

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[150]Laurie Mesibov, "U.S. Supreme Court Rules on Moment of Silence Statutes," School Law Bulletin XVI, No. 3 (Summer 1985):21.

[151]Wallace v. Jaffree, 472 U.S. 37 (1985):82.

[152]Ibid. [153]Ibid., p. 113.

that the Supreme Court ruling did not uphold the Alabama silent prayer statute.

The High Court decision, while answering certain questions regarding moment of silence statutes, leaves others unanswered. The Supreme Court's opinion does not specify whether a policy or statute adopted "for a secular purpose and phrased from the start to authorize both silent meditation and silent prayer would unconstitutionally favor prayer over meditation."[154]

Another controversial area concerns religious meetings on public school property. Those who support such activities frequently cite the protection of the free exercise clause of the First Amendment which guarantees freedom of speech. Opponents challenge the same activities by pointing to the establishment clause of the First Amendment which prohibits excessive government support of religion. "School officials who have the responsibility for making and implementing policies in this area," asserts Zirkel, "must find a way not only through this thicket of legal theory and doctrine, but also between the practical branches of emotions and politics."[155]

In recent years, a Supreme Court decision, numerous appellate court rulings, and one piece of federal legislation

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[154]Mesibov, "U.S. Supreme," p. 21.

[155]Zirkel, "Recent Prayer-Related," p. 4.

have attempted to define the balance between the two conflicting provisions of the First Amendment. Each of these developments will be delineated in an effort to clarify the legality of student religious groups meeting on public school campuses.

In Widmar v. Vincent,[156] a student religious group, Cornerstone, at a public university in Missouri, protested a regulation that banned the use of campus buildings or grounds for religious worship or teaching. The United States Supreme Court concluded that the university's neutral, open-door policy for extracurricular activities in essence established an open forum for student groups. The free speech clause of the First Amendment thus prevented the university from excluding any group on the basis of their views unless the exclusion was necessary to serve a compelling state interest. The High Court held that allowing Cornerstone to meet only incidentally benefited religion. Relying on the tripartite test, the majority concluded that a policy allowing Cornerstone and all other student groups to meet:

> [W]ould have the secular purpose of making campus facilities available to all student organizations; it would not advance religion because the institution's endorsement of religious groups would not be implied any more than its endorsement of student political groups; and an "equal access" policy would avoid excessive

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[156]Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

> governmental entanglement with religion because minimal supervision of student organizations is required on college campuses.[157]

Accurate knowledge of the concept of public forums is crucial to an understanding of permissible activities. The Supreme Court has categorized government property into the following three types of forums: (1) traditional public forum, (2) public forum by designation, and (3) traditionally nonpublic forum.[158] Public parks, streets, and sidewalks are examples of a traditional public forum. It is here that individuals enjoy the greatest degree of freedom of speech with regard to time, place, manner of expression, and content. Reasonable government regulations are permitted "as long as the regulations are neutral in regard to the content of expression, are narrowly tailored to serve a significant government interest, and leave alternative channels of communication open."[159]

Public colleges and universities as well as auditoriums in government buildings are examples of a public forum by designation. In this instance, the governing body of the institution uses its own discretion to determine if an open forum will exist. While the ruling body is not required to

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[157]McCarthy, "Religion and Public," p. 297.

[158]Janine M. Murphy, "Access to Public School Facilities and Students by Outsiders," School Law Bulletin XVI, No. 1 (Winter 1985):10-11.

[159]Ibid., p. 10.

provide an open forum, once it has done so, it is governed by the same standards that apply to a traditional public forum. It was on this basis that Cornerstone was granted permission to meet at the University of Missouri-Kansas by the Supreme Court.

Traditionally nonpublic forums have included places such as public schools, government office buildings, and military bases. In such a forum, government officials may control free speech activity by either retaining authority to control the content of all expressive activities or they may create a limited public forum within the nonpublic forum.[160] This occurs when access is open to certain types of groups but closed to others. If, for example, a school permits Cub Scouts and the Y.M.C.A. to use the school's mailing system, a limited public forum is opened for groups that provide activities for students.[161] In summation, the following can be concluded:

> Constitutional right of access to that forum, however, extends only to other entities of similar character (i.e., organizations for youth); it does not require that the forum be open to other types of organizations (e.g., teacher unions and political parties).[162]

In considering the issue of granting permission to non-school groups to use school property, a school board has three distinct options. First, it may ban the use of all facilities by all outside groups. This, however, is

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[160] Ibid., p. 12. [161] Ibid. [162] Ibid.

inconsistent with the goal of many districts to encourage greater utilization of public school facilities since they have been financed with public tax dollars. A second option is to create a designated public forum and permit access to the facility by all outside groups. Option three is to create a limited public forum.[163]

New Right groups have sought to extend the open forum concept in Widmar[164] to public secondary and elementary schools. A review of federal appellate decisions involving high school students generally confirms a distinction that is made by the courts between the free speech rights of college students attending state institutions and secondary school students. In the former situation, the Supreme Court upheld student rights, whereas in the later, appellate courts have typically supported the authority of the schools. McCarthy suggests the following:

> Perhaps this double standard is partially explained by the differences in the maturity of the students, their vulnerability to indoctrination, and the need for faculty supervision; the compulsory nature of at least part of high school; and the fact that college students often reside on campuses which become their total community.[165]

In a 1980 decision, the Second Circuit Court of Appeals, with Justice Irving Kaufman presiding, ruled that it was

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[163]Ibid., p. 14.

[164]Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

[165]McCarthy, "Religion and Public," p. 298.

constitutional for the school administration to deny permission to the "Students for Voluntary Prayer" to meet in an unused classroom prior to the outset of the official school day.[166] In a Texas case, the Fifth Circuit Court of Appeals ruled against a school board regulation which allowed students to meet at the school with supervision either before or after regular hours "for any educational, moral, religious, or ethical purposes so long as attendance at such meetings is voluntary."[167] The court was influenced by the following:

> [P]ast history of the school district in promoting religion through morning Bible readings over the school public address systems, classroom prayers led by teachers, a period of silent prayer ended by "Amen" over the public address systems, and distribution of Gideon Bibles to elementary students.[168]

The Eleventh Circuit addressed the issue in 1984 when a Georgia school district was challenged for permitting Youth for Christ, a student religious group, to meet on school property under the supervision of a faculty member.[169] At issue also was the district's policy of allowing use of school bulletin boards and the public address system for church

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[166]Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981).

[167]Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), p. 1041.

[168]Epley, "Recent Litigation," p. 15.

169Nartowicz v. Clayton County School District, 736 F. 2d 646 (11th Cir. 1984).

related announcements. The court ruled against the policies of the Clayton County School District due to excessive entanglement with religion.

The Tenth Circuit in 1985 struck down a policy of the Little Axe Independent School District which permitted students to attend religious meetings upon arrival at school each Thursday morning.[170] While noting that the policy had no secular purpose, advanced religion, and created excessive entanglement, the court was particularly concerned that elementary school students were involved.

In May v. Evansville-Vanderburgh School Corporation,[171] equal access took a new twist. Whereas most other litigated cases involved the use of school facilities by outside groups, in this situation evangelical Christian school teachers were not permitted to use the school premises where they were employed to meet weekly before the start of school for a religious meeting which included prayer and Bible study. In the 1986 decision, the Seventh Circuit Court of Appeals ruled against the teachers.

In spite of the trend in the judicial branch to prohibit religious clubs from meeting on public school campuses, the Congress embarked on an apparently contradictory path with

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[170]Bell v. Little Axe Independent School District No. 70, 766 F. 2d 1391 (10th Cir. 1985).

[171]May v. Evansville-Vanderburgh School Corp., 787 F. 2d 1105 (7th Cir. 1986).

the passage of the Equal Access Act (E.A.A.) on July 25, 1984. This legislation was pejoratively dubbed "son of school prayer" because prayer would become the presumed focus of the student religious meetings.[172] Birthed in the Widmar[173] case, the idea behind the Congressional efforts was to extend the scope of the Supreme Court decision to public schools. While Republicans generally favored extending the scope of the ruling to all grade levels, Democrats supported an extension to include only secondary schools. Whereas many religious groups supported the measure, others such as Jews, the Unitarian Church, the Lutheran Church, and the United Methodist Church voiced opposition. Reverend Bergstrom of the Lutheran Council expressed the rationale for the opposition as follows:

> Equal access is either designed for the purpose of proselytizing, or for the purpose of showing off religiosity. Religion should be far more than a school club. Furthermore, a prayer club is the opposite of the example Jesus gave to us. He was the one who said when you pray to your Father in heaven, you should do so behind a closed door.[174]

The New Right viewed equal access legislation as a viable alternative to a proposed constitutional amendment on school prayer. In order to avoid the House of Representatives Judiciary Committee, where the odds were stacked against equal access legislation, Congressman Carl Perkins proposed an administrative rather than a judicial remedy. By

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[172]Moen, "The New Christian," p. 266.

[173]Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

[174]Moen, "The New Christian," p. 267.

suggesting that aid be halted to schools not in compliance, he was able to steer the bill to his Education and Labor Committee. The bill easily won approval at this stage, but failed on the floor of the House. Despite this temporary setback, the bill eventually was approved by the House of Representatives in July, 1984, when the House overwhelmingly "voted 337-77 to pass H.R. 1310, a popular math/science education bill to which the Senate had attached equal access provisions acceptable to the House."[175] The original Senate bill had been defeated, thus proponents sought a vehicle to which to attach the equal access proposal. The popular math/science education bill provided such a vehicle. President Reagan quickly signed the bill, thus handing the New Right a major legislative victory in the 98th Congress.

The original proposal to tie compliance to the receipt of federal funds was not included in the Equal Access Act. "The basis thrust of E.A.A.," contends Benjamin Sendor, "is to codify Widmar for public high schools."[176] Once a high school permits some groups to meet for non-curricular purposes, it may not deny permission to other such student groups to meet. While the bill was introduced to grant access to student religious groups, the effect is to provide equal

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[175]Ibid., p. 272.

[176]Benjamin B. Sendor, "The Role of Religion in the Public School Curriculum," School Law Bulletin XV, No. 3 (July 1984):3.

access for all extracurricular groups such as philosophical and political groups. Young Democrats, Young Gays, Hare Krishna and the Ku Klux Klan may thus demand equal access and may not be excluded on the basis of group members' views.

The E.A.A. applies exclusively to schools that already allow noncurriculum related groups to meet during noninstructional time. A school that bars all such meetings is exempted from compliance with the Equal Access Act. Boards of education seeking an exemption from E.A.A. requirements "may either ban all 'noncurriculum related' groups or define 'curriculum related' broadly enough to encompass all existing nonreligious, nonpolitical, and nonphilosophical groups."[177]

The E.A.A. does contain several restrictions or guidelines. First, the access provisions apply only to secondary and not elementary schools. Second, the meetings must be held before or after school hours, and not during noninstructional periods occurring during the school day such as lunch, study halls or homeroom. Next, school employees may be present at the meetings in a monitoring role, but cannot participate in the meetings. Fourth, all meetings must be initiated by students and have voluntary attendance policies. Finally, people outside the school may not regularly attend or direct the meetings.[178]

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[177]Ibid., p. 3.

[178]Moen, "The New Christian," p. 187.

The provisions of the Equal Access Act appear to be inconsistent with the judicial rulings in the second, fifth, seventh, tenth, and eleventh circuits. The Third Circuit Court of Appeals reached a similar verdict in Bender.[179] Lisa Bender and several other students were allowed to hold an organizational meeting for a newly proposed religious club, Petros, during a thirty minute activity period which took place during the school day. Subsequent meetings were not permitted due to fear of establishment clause violations. The district court applied the findings in Widmar[180] to the high school setting and ruled that the freedom of speech of the students had been abrogated. On appeal, however, the United States Court of Appeals for the Third Circuit agreed that students had a genuine free speech interest in forming Petros, but also ruled that prohibiting Petros from assembling was necessary in order to protect the school board's compelling interest in complying with the establishment clause. The case was appealed to the United States Supreme Court. In a five to four decision, the Court sidestepped one of the most hotly debated issues in church-state relations by ruling that the appellate court decision was nullified on a technical error. While the constitutionality of the Equal Access Act

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[179]Bender v. Williamsport Area School District, 741 2d 528 (3rd Cir. 1984), 106 S. Ct. 2083 (1986).

[180]Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

was not directly at issue in the lawsuit, both parties agreed that a decision by the Supreme Court to support the ruling of the appellate court would cast doubt on the legality of the E.A.A.[181]

"It's a shame that they didn't decide the case one way or another because it makes things very confusing for district officials,"[182] quipped Gwendolyn Gregory, a lawyer for the National School Boards Association. Ms. Gregory has advised local boards of education to abide by the rulings of the federal appeals court that has jurisdiction in their geographical area. If districts are not located in a district in which the appellate court has ruled, she recommends adherence to the dictates of the Equal Access Act.[183]

Inconsistency thus prevails concerning the legitimacy of equal access to public school facilities. Appellate courts are typically consistent, but Congressional legislation has created confusion. Two months after the Supreme Court disposed of Bender,[184] the Williamsport school board voted with some reluctance to reverse its stand and allow Petros to meet twice weekly during noninstructional periods before the start of the school day.

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[181]Tom Mirga, "Supreme Court Skirts Ruling on Religious Club's Suit," Education Week 5, No. 28 (April 2, 1985):12.

[182]Ibid. [183]Ibid.

[184]Bender v. Williamsport Area School District, 106 S. Ct. 2083 (1986).

CHAPTER IV

REVIEW OF SIGNIFICANT COURT DECISIONS

Introduction

This chapter contains an analysis of significant court decisions concerning secular humanism, censorship of materials, the evolution-creationism controversy and religious practices, such as prayer, meditation, and religious meetings in the nation's public schools. The facts of the case, decision of the court, and a discussion of the impact of the ruling are presented for each case. Categories and cases are listed below:

1. Secular Humanism:

   Crockett v. Sorenson, 568 F. Supp. 1422 (1983).

   Grove v. Mead School District No. 354, 753 F. 2d 528 (9th Cir. 1985), cert. denied 106 S. Ct. 85, 88 L. Ed. 2d70.

   Mozert v. Hawkins County Public Schools, 647 F. Supp. 1194 (E.D. Tenn. 1986), reversed No. 86-6144/6179/6180/87-5024 (6th Circuit 1987).

   Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Alabama 1987), reversed and remanded No. 87-7216 (11th Cir. 1987).

2. Censorship of Materials:

   Minarcini v. Strongsville City School District, 384 F. Supp. 698 (N.D. Ohio 1974), aff'd in part, rev'd in part, 541 F. 2d 577 (6th Cir. 1976).

   Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978).

Cary v. Board of Educaton of the Adams-Arapahoe School District, 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F. 2d 535 (10th Cir. 1979).

Bicknell v. Vergennes Union High School Board of Directors, 475 F. Supp. 615 (D. Vt. 1979), aff'd, 638 F. 2d 438 (2d Cir. 1980).

Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982).

Board of Education, Island Trees Union Free School District No. 26 v. Pico, 474 F. Supp. 387 (E.D.N.Y. 1979), rev'd and remanded, 638 F. 2d 404 (2d Cir. 1980), aff'd, 457 U.S. 853 (1982).

3. Evolution-Creationism Controversies:

Daniel v. Waters, 399 F. Supp. 510 (M.D. Tenn. 1975), 515 F. 2d 485 (6th Cir. 1975).

McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (E.D. Ark. 1982).

Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), reh. den. 779 F. 2d 225 (5th Cir. 1985), jurisdiction noted 106 S. Ct. 1946 (case no. 85-1513, 1987).

4. Prayer:

Meltzer v. Board of Public Instruction of Orange County, Florida, 548 F. 2d 559 (1977), 577 F. 2d 311 (5th Cir. 1977), cert. denied, 439 U.S. 1089 (1979).

Hall v. Board of School Commissioners of Conecuh County, 656 F. 2d 999 (5th Cir. 1981).

Collins v. Chandler Unified School District, 470 F. Supp. 959 (D. Ariz. 1979), 644 F. 2d 759 (9th Cir. 1981), cert. denied, 454 U.S. 863 (1981).

Karen B. v. Treen, 653 F. 2d 897 (5th Cir. 1981), aff'd 102 S. Ct. 1267 (1982).

Doe v. Aldine Independent School District, 563 F. Supp. 883 (S.D. Tex. 1982).

Graham v. Central Community School District of Decatur County, 608 F. Supp. 531 (D.C. Iowa 1985).

5. Meditation:

Beck v. McElrath, 548 F. Supp. 1161 (MD.. Tenn. 1982).

Duffy v. Las Cruces Public Schools, 557 F. Supp. 1013 (D.N.M. 1983).

Walter v. West Virginia Board of Education, 610 F. Supp. 1169 (D.C. W.Va. 1985).

Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd, 472 U.S. 37 (1985).

May v. Cooperman, 572 F. Supp. 1561 (1983), 780 F. 2d 240 (3rd Cir. 1985).

6. Religious Meetings:

Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981).

Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), reh. denied 680 F. 2d 424 (5th Cir. 1982), cert. denied 103 S.Ct. 800.

Nartowicz v. Clayton County School District, 736 F. 2d 646 (11th Cir. 1984).

Bell v. Little Axe Independent School District No. 70, 766 F. 2d 1391 (10th Cir. 1985).

May v. Evansville-Vanderburgh School Corp., 787 F. 2d 1105 (7th Cir. 1986).

Bender v. Williamsport Area School District, 741 2d 538 (3rd Cir. 1984), 106 S. Ct. 2083 (1986).

Secular Humanism

Crockett v. Sorenson, 568 F. Supp. 1422 (1983).

Facts

For over forty years, an alliance of Protestant ministers sponsored a Bible class program for fourth and fifth graders in the public schools of Bristol, Virginia. Attendance was voluntary and no grades or credit were issued. The ministerial coalition selected, hired, supervised, and paid the teachers and prepared a course of study outline for the curriculum. Parents of a fifth grade student, Kathleen Crockett, brought legal action challenging the program was violative of their First Amendment rights.

Decision

Justice Kiser ruled that the establishment of religion clause does permit instruction in the Bible in the public schools. The Bristol program, however, was judged to be unconstitutional because sponsorship and control of the program was granted to an outside agency and not controlled by the state.

Discussion

While ruling in favor of the state, the decision by Justice Kiser nevertheless added additional artillery to the arsenal of those who assert that public schools are bastions of secular humanism. The court reasoned as follows:

> The First Amendment was never intended to insulate our public institutions from any mention of God, the Bible or religion. When such insulation occurs, another religion, such as secular humanism, is effectively established.[1]

Citing Torcaso[2] and Schempp,[3] the court reasoned that establishment clause violations might occur in the absence of outright hostility toward theistic religions. Justice Kiser supported his contention by employing the following quotation from Whitehead and Conlon:

> On the fundamental religious issue, the modern university intends to be, and supposes that it is, neutral, but it is not. Certainly it neither inculcates nor expressly repudiates belief in God. But it does what is far more deadly than open rejection; it ignores Him. . . . It is in this sense that the university today is atheistic. . . . It is a fallacy to suppose that by omitting a subject you teach nothing about it. On the contrary, you teach that it is to be omitted, and that it is therefore a matter of secondary importance. And you teach this not openly and explicitly, which would invite criticism, you simply take it for granted and thereby insinuate it silently, insidiously, and all but irresistibly.[4]

While the above quotation referred to the British university system, the court reasoned that it did have applicability to the public schools. A secular education, insisted the court, requires that students have a good knowledge of the Bible. Constitutional mandates, moreover, permit the

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[1]Crockett v. Sorenson, 568 F. Supp. 1422 (1983), p. 1425.

[2]Torcaso v. Watkins, 363 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961).

[3]Abington School District v. Schempp, 374 U.S. 203 (1963).

[4]Crockett v. Sorenson, 568 F. Supp. 1422 (1983), p. 1426.

study of the Bible in the public school classroom as long as the purpose is to educate, rather than indoctrinate. Noting, however, the "strong religious overlay that stems from the conception and management of the program by the sponsors,"[5] the court concluded the program was instituted and maintained as a religious exercise to further the beliefs of Christianity. Control over the program and staff for the Bible study course was under the authority of a religious alliance, known as Bible Teaching in the Public Schools. Since the state had relinquished authority of the program to an outside agency and since the program existed for religious reasons, the court concluded that the Bristol Bible courses constituted an establishment of religion in violation of the First Amendment to the Constitution.

Grove v. Mead School District No. 354, 753 F. 2d 1528 (9th Cir. 1985), cert. denied 106 S. Ct. 85, 88 L. Ed. 2d 70.

Facts

Cassie Grove was assigned The Learning Tree, a novel by Gordon Parks about life in a black rural community, as part of the course of study in her high school sophomore English literature class. Both Cassie and her mother found portions of the book to be offensive because it had the "primary effect of inhibiting their religion, fundamentalist

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[5]Ibid., p. 1430.

Christianity, and advancing the religion of secular humanism."[6] When the teacher was informed of these objections, the student was assigned another book and granted permission to leave the classroom during discussion of Park's novel. Mrs. Grove, nonetheless, filed a formal complaint and an evaluation committee was assigned to review the book. The board of education accepted the advice of the committee, granted a hearing to the parent, but denied the request to remove the book from the curriculum. With support from the Moral Majority, the parent pursued litigation arguing that the school's use of the book created an establishment of a state religion in violation of the First Amendment.

Decision

The district court judge dismissed the suit because the plaintiffs presented insufficient evidence. Upon appeal to the Ninth Circuit Court of Appeals, Justice Wright concluded that the school board was not in violation of the free exercise clause. Furthermore, use of the book was not considered to be an establishment of religion.

Discussion

In reviewing possible violations of the free exercise clause, the court decided to deal with the three following factors: "(1) the extent of the burden upon the exercise of

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[6]Grove v. Mead School District No. 354, 753 F. 2d 1528 (9th Cir. 1985), p. 1534.

religion, (2) the existence of a compelling state interest justifying the burden, and (3) the extent to which accommodation of the complainant would impede the state's objectives."[7] The court noted that Cassie had been given an alternate assignment and not required to participate in classroom discussions, thus the school board was clearly not in violation of the free exercise clause.

Justice Wright noted that religious comments formed only a minor portion of The Learning Tree and judged the book to be primarily secular in nature. In a concurring opinion, Justice Canby set forth a detailed account of the concept of secular humanism. He stated that the plaintiffs necessarily but erroneously equated the terms "secular" and "humanist" to be synonymous with "anti-religious."[8] Humanism, he concluded, was not incompatible with all religious doctrine.

The plaintiffs' argument was partly based on a footnote in Torcaso v. Watkins[9] which referred to secular humanism as a religion. Justice Canby asserted that the breadth of that reference had been taken out of context and dramatically overstated. He continued by contending that the definition of religion may be dependent on the type of case involved. In Torcaso,[10] a free exercise case, a more liberal and

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[7]Ibid., p. 1533. [8]Ibid., p. 1535.

[9]Torcaso v. Watkins, 363 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961).

[10]Ibid.

expansive definition of religion might be acceptable, but "The same expansiveness in interpreting the establishment clause is simply untenable in an age of such pervasive governmental activity."[11]

The Learning Tree was not purchased or endorsed by any official humanist organizations. Acknowledging that the novel might embody some anti-Christian elements, Justice Canby rejected that as the primary issue. "Instead," he asserted, "the issue is whether its selection and retention by school officials 'communicates a message of governmental endorsement' of those elements."[12] The Learning Tree, he concluded, neither instilled nor inhibited religious belief and therefore was not violative of the establishment clause. Neither, he asserted, was there an infringement on the free exercise of religion. Justice Canby summarized as follows:

> [D]istinctions must be drawn between those governmental actions that actually interfere with the exercise of religion, and those that merely require or result in exposure to attitudes and outlooks at odds with perspectives prompted by religion.[13]

Mozert v. Hawkins County Public Schools, 647 F. Supp. 1194 (E.D. Tenn. 1986), reversed No. 86-6144/6M9/6180/87-5024 (6th Cir. 1987).

In 1983, the Hawkins County Public Schools adopted "Riders on the Earth," a reading series produced by Holt,

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[11]Grove v. Mead School District No. 354, 753 F. 2d 1528 (9th Cir. 1985), p. 1537.

[12]Ibid., p. 1539. [13]Ibid., p. 1543.

Rinehart, and Winston for use in kindergarten through eighth grade. When students refused to participate in reading classes using the Holt series, the students were suspended. Several fundamentalist parents filed suit against the superintendent, school board and four principals for violating their constitutionally protected right to freedom of religion. The parents asserted that the schools should provide an alternative reading program and reimburse them for private school expenses incurred when the students were withdrawn from public school.

Decision

The district court initially ruled against the parents, stating that the contested books were neutral on the subject of religion. Upon appeal to the United States Court of Appeals for the Sixth Circuit, the judgment was reversed and remanded. The appellate court instructed the district court

> to determine whether the school board's action did, in fact, create a burden on the plaintiffs' free exercise rights; and if so, whether the infringement was justified by a compelling state interst, and then whether the state used the least restrictive means of achieving that compelling interests.[14]

On remand, the district court ruled that the rights of the plaintiffs had been unconstitutionally violated.

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[14]Laurie Mesibov, "Tennessee Students Who Have Religious Objections to the Reading Textbooks May Be Taught Reading at Home," School Law Bulletin XVIII, No. 2 (Spring 1987): 37.

Discussion

The parents alleged that the Holt series advocated euthanasia, situational ethics, idol worship, witchcraft, values clarification and disobedience to parents. Exposure to such liberal, modernistic and anti-Christian values, they avowed, might cause them to adopt the views of secular humanism. When first approached by the concerned parents, school administrators agreed to give alternate assignments. The school board, however, later promulgated a policy requiring the use of solely board adopted textbooks in the instructional program. Parents then refused to allow their children to attend reading classes in which the Holt series was being used. School officials repsonded with three day and later ten day suspensions for the students. Parents subsequently withdrew their children from the Hawkins County Public Schools and enrolled them in private fundamentalist schools.

On remand, the district court concluded that certain materials in the Holt series were offensive to the sincerely held religious convictions of the plaintiffs. The primary issue was whether the state could demonstrate a compelling interest in public education that required the use of the Holt series throughout the school district. School officials defended their approach for the following three reasons:

> (1) Providing alternative programs would be difficult to administer; (2) it would be impossible to develop a program acceptable to the plaintiffs; (3) if

> plaintiffs were allowed an alternative, the school would be flooded with similar requests for alternative programs.[15]

The district court noted the fact that several basal reading series had been approved for use in the Tennessee schools and therefore concluded that any particular series must be expendable. Several educational experts testified that individualized instruction was preferable to a uniform approach. It was the assessment of the court that the state's interst in uniformity was not absolute and the requests of the plaintiffs could be accommodated without disrupting the educational process. "Accommodating the beliefs of the small group of students involved in this case," reasoned Judge Hull, "would not wreak havoc in the school system by initiating a barrage of requests for alternative materials."[16]

The board was enjoined from requiring the use of the Holt series for these students and parents were given permission to remove their children from the school reading program as long as home instruction was provided. Since permissible by Tennessee statute, "home schooling for a single subject was a reasonable alternative that would not violate either plaintiffs' free exercise right or the establishment

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[15]Ibid.

[16]Kirsten Goldberg, "Textbook Decision Fuels Debate on Role of Religion in Schools, Rights of Parents," Education Week 6, No. 9 (November 5, 1986):18.

clause."[17] This remedy was suggested because "considerable evidence indicated that no single, secular reading series on the state's approval list would be acceptable to the plaintiffs without modifications."[18]

In an effort to narrow the scope of the decision, Judge Hull concluded with the following limitations:

> This opinion shall not be interpreted to require the school system to make this option available to any other person or to these plaintiffs for any other subject. Further accommodations, if they must be made, will have to be made on a case-by-case basis by the teachers, school administrators, board, and department of education in the exercise of their expertise, and failing that, by the Court.[19]

Smith v. Board of School Commissioners of Mobile County, 655 F. Supp., 939 (S.D. Ala. 1987), reversed and remanded No. 87-7216 (11th Cir. 1987).

Facts

Douglas Smith was one of numerous plaintiffs who brought suit alleging that the public school curriculum in Alabama unconstitutionally advanced the religion of secular humanism and thus had the effect of inhibiting their own religion, fundamentalist Christianity. They further proclaimed that the instructional program and textbooks "excluded history of the contributions of Christianity to the American way of life, denied to teachers and students free speech and free

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[17] Mesibov, "Tennessee Students," p. 38.

[18] Goldberg, "Textbook Decision," p. 18.

[19] Ibid., p. 19.

exercise of their religion and violated the Code of Alabama."[20] Home economics and social studies textbooks became the focus of the controversy.

Decision

The case grew out of an earlier prayer case, Wallace v. Jaffree,[21] which challenged prayer and meditation in Alabama classrooms. The original judge in that case, Justice Brevard Hand, also ruled in the current case. The court concluded that for purposes of First Amendment considerations, secular humanism was a religion. After a review of Alabama public school textbooks, Justice Hand asserted that they failed to include references to the significant impact of religion in the history of our nation and also taught students that moral values were personal and situational. Based on these two assumptions, the court reasoned that use of these textbooks had the impermissible effect of promoting secular humanism. The court subsequently banned the use of forty-four textbooks from the public schools of Alabama (see Appendix D). The defendants have appealed to the United States Court of Appeals for the Eleventh Circuit.where the decision was reversed and remanded.

Discussion

Plaintiffs, consisting of public school teachers as well as other concerned citizens, stated that the textbooks

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[20]Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Ala. 1987), p. 940.

[21]Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd, 472 U.S. 37 (1985).

took "the Lord's name in vain,"[22] were objectionable to "Christian views,[23] "promulgated secular humanism,"[24] espoused that "humans are strictly a result of some biological process and nothing more,"[25] and taught that "there are no absolutes, such as right and wrong."[26] The state defended itself by asserting that the textbooks had a secular purpose and failed to create an establishment of religion. The defense maintained that accommodation of many different religions would impede the operation of the schools. Admitting that current social studies and history books contained insufficient reference to the contributions of religion, the state promised action by the state superintendent to correct any existing deficiencies.

Trial proceedings were characterized by lengthy testimonies from a variety of persons concerning the quality of education in the state of Alabama, the history and development of humanism, attempts to define the scope and parameters of religion, a review of the textbooks, and efforts to determine if secular humanism fit the definition of a religion. Dr. Paul Kurtz, a member of the American Humanist Association and author of the Humanist Manifesto II, testified that the

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[22]Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Ala. 1987), p. 943.

[23]Ibid. [24]Ibid.

[25]Ibid. [26]Ibid.

viewpoints of secular humanism were not religious. "It is a scientific method of unfettered opportunity," he proclaimed, "to investigate any domain of human interest without preconceptions of a religious nature."[27] Kurtz acknowledged that members of humanist organizations disagreed as to whether secular humanism was a religion and admitted that the Humanist Association had "undertaken efforts to obtain first amendment constitutional immunities and the protections afforded theistic religions."[28]

At the conclusions of the testimonies, Justice Hand asserted that the case was not about returning prayer to the public schools, not an attempt to censor materials and not "an attempt of narrow-minded or fanatical proreligionists to force a public school system to teach only those opinions and facts they find digestible."[29] Instead, he avowed, the issue focused on an alleged improper advancement of religious beliefs, secular humanism, in violation of the United States Constitution.

After an extensive review of case law related to the separation of church and state, Justice Hand noted inconsistencies in various court rulings and ascertained that the Supreme Court had never clearly defined "religion." Judge Hand proceeded to proclaim secular humanism a religion because it was a belief system that met the following characteristics:

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[27]Ibid., p. 967. [28]Ibid., p. 968. [29]Ibid., p. 972.

> [M]akes a statement about supernatural existence a central pillar of its logic; defines the nature of man; sets forth a goal or purpose for individual and collective human existence; and defines the nature of the universe, and thereby delimits its purpose.[30]

Secular humanists, he asserted, have organizational characteristics similar to other religions and have a belief system or creed based on the Humanist Manifesto I, Humanist Manifesto II, and the Secular Humanist Declaration. In recognizing leaders such as John Dewey, Sidney Hooks, Paul Kurtz, and Corliss Lamont, the court rejected the notion that secular humanism was scientific methodology instead of a religious movement.

Having thus concluded that secular humanism was a religion for purposes of the First Amendment, attention then focused on the specific textbooks being challenged to determine if they had the effect of espousing such a religion. The court concluded that the omission of important material might be violative of the First Amendment. In regard to the social studies and history books in Alabama, Justice Hand made the following judgment:

> Omissions, if sufficient, do affect a person's ability to develop religious beliefs and exercise that religious freedom guaranteed by the Constitution. Do the omissions in these history books cross that threshold? For some of them, yes. In addition to omitting particular historical events with religious significance, these books uniformly ignore the religious aspect of most American culture.[31]

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[30]Ibid., p. 978. [31]Ibid., p. 985.

With regard to the home economics textbooks at issue, the court concluded that "Teaching that moral choices are purely personal and can only be based on some autonomous, as yet undiscovered and unfulfilled, inner self is a sweeping fundamental belief that must not be promoted by the public schools."[32]

The court thus affirmed the assertions of the plaintiffs that use of the challenged textbooks did violate the establishment clause of the First Amendment. The court was "thus compelled to grant plaintiffs their requested relief barring the further advancement of the tenets of the religion of secular humanism."[33]

Censorship of Materials

Minarcini v. Strongsville City School District, 384 F. Supp. 698 (ND.. Ohio 1974), aff'd in part, rev'd in part, 541 F. 2d 577 (6th Cir. 1976).

Facts

In Strongsville, Ohio, citizens became embroiled in a controversy concerning the selection of high school textbooks and the appropriateness and removal of certain books in the media center. As a result, the board of education refused to purchase God Bless You, Mr. Rosewater by Kurt Vonnegut and Joseph Heller's Catch 22. The board also ordered the removal of the later and Vonnegut's Cat Cradle from the

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[32] Ibid., p. 987.

[33] Ibid., p. 988. The decision of the district court was recently reversed and remanded by the Eleventh Circuit Court of Appeals.

library. Citizen objections to these books centered on the frequent use of profanity and references to sexual acts. The parents of five high school students brought class action against the school district on behalf of their children alleging a violation of First and Fourteenth Amendment rights.

Decision

The United States District Court with Justice Robert Kampansky presiding, found no constitutional violations. Upon appeal to the Sixth Circuit Court of Appeals, Justice Edwards separated the case into two component parts: (1) the purchase and removal of school district textbooks, and (2) the removal of books from the library. The appellate court upheld the trial court's decision regarding the right of the board of education to select course textbooks, but reversed the lower court ruling on the issue of removal of library books. The school board was instructed to replace the books that had been removed.

Discussion

In vacating and reversing the lower court's stance on removal of library books, Justice Edwards concluded that Justice Kampansky had adopted a too liberal interpretation of the Second Circuit Court of Appeals decision in Presidents Council, District 25 v. Community School Board No. 25.[34]

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[34]President's Council, District 25 v. Community School Board No. 25, 457 F. 2d 289 (2d Cir. 1972).

While the district court judge believed the school board had an absolute right to remove and possibly destroy any books it regarded as unfavorable, the Second Circuit Court of Appeals stipulated that First Amendment protections must be considered.

> A library is a storehouse of knowledge. When created for a public school it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to "winnow" the library for books the content of which occasioned their displeasure or disapproval. Of course, a copy of a book may wear out. Some books may become obsolete. Shelf space alone may at some point require some selection of books to be retained and books to be disposed of. No such rationale is involved in this case, however.[35]

Justice Edwards asserted that neither the state nor the local school board was compelled by law to provide a library at Strongsville High School. "Once having created such a privilege for the benefit of its students, however," contended Justice Edwards, "neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members."[36]

Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978)

Facts

After receiving objections to the language contained in one poem in an anthology, Male and Female Under 18, the

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[35]Minarcini v. Strongsville City School District, 541 F. 2d 577 (6th Cir. 1976), p. 581.

[36]Ibid., p. 582.

Chelsea School Committee voted to remove the series from the high school library. Andrew Quigley, committee chairman, characterized the poem as "low down rotten filth, garbage, fit only for the sewer"[37] and expressed grave concern that the book was able to be distributed in the Chelsea schools. Claiming an infringement of the First Amendment rights of students and parents, the Right to Read Defense Committee brought action to obtain an injunctive order to return the banned book to the shelves of the high school library.

Decision

Noting that the poem, "City," is not a "polite poem" and "employs vivid street language, legitimately offensive to some,"[38] Judge Tauro nevertheless concluded that the removal of the anthology "did not serve a substantial governmental interest and constituted an infringement on First Amendment rights of students and faculty."[39] He emphasized that the committee had objections to only one poem in the anthology and therefore the book was not evaluated to be obscene or improperly selected.

Discussion

The librarian at Chelsea High School, Sonja Coleman, purchased a one thosuand volume reading program from Prentice

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[37]Right to Read Defense Committee of Chelsea v. School Committee of the City of Chelsea, 454 F. Supp. 703 (D. Mass. 1978), p. 708.

[38]Ibid., p. 714. [39]Ibid., p. 703.

Hall Publishing Company for the purpose of stimulating student reading interest. Upon delivery, the materials were reviewed and shelved. The contested material, Male and Female Under 18, was an anthology written by students between the ages of eight and eighteen containing both prose and poetry. Coleman reviewed the introduction to the book and scanned the contents, but did not read "City," the poem being protested. After the furor developed, the librarian recommended that the book not be removed from the library without a hearing suggested by the American Library Association. Quigley was "shocked and extremely disappointed to have our high school librarian claim there is nothing lewd, lascivious, filthy, suggestive, licentious, pornographic or obscene about this particular poem."[40] The committee chairman even suggested that Coleman be transferred from the library to a classroom position because of her selection error. At a special meeting of the committee on August 17, 1977, the anthology was removed from the library on the following grounds: (1) books dealing with sex education were inappropriate; (2) the contested poem might have an "unhealthy and counter-productive" influence on students; and (3) materials considered obscene by a large portion of the community should not be permitted.[41]

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[40]Ibid., p. 708. [41]Ibid., p. 709.

Judge Tauro was quick to affirm the right of the school committee to "determine what books will go into a library and, indeed, if there will be a library at all."[42] As in Minarcini, however, the central issue revolved around the power of the school committee to remove a library book that was already on the shelves. The committee had been under no obligation to purchase the anthology, but once such action had been taken, removal "may consequentially create a constitutionally protected interest."[43] Judge Tauro expressed alarm at the prospect of successive school committees removing specific selections from the school library because of their own particular views. In ruling against the removal rights of the school district, he noted the following about the school library:

> There a student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum. The student who discovers the magic of the library is on the way to a lifelong experience of self-education and enrichment. That student learns a library is a place to test or expand upon ideas presented to him, in or out of the classroom.[44]

Cary v. Board of Education of the Adams-Arapahoe School District, 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F. 2d 535 (10th Cir. 1979).

Facts

Five senior high school English teachers in the Adams-Arapahoe School District brought suit against the school

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[42]Ibid., p. 711. [43]Ibid., p. 712. [44]Ibid., p. 715.

district "seeking declaration that their rights had been violated when the board of education banned ten books out of a list of 1,285 books for use in their elective language arts classes."[45] Teachers had previously used the banned materials in their classrooms and therefore asserted that the actions of the board abrogated their constitutional rights to academic freedom. A clause in the collective bargaining contract, however, stated that "the processes, techniques, methods and means of teaching any and all subjects was a school board privilege."[46]

Decision

Following a judgment in favor of the school system in the district court, the plaintiffs made an appeal to the United States Court of Appeals for the Tenth Circuit. Justice Logan ruled that the teachers had not waived their constitutional rights, as held by the trial court, as a result of the collective bargaining agreement with the school district. Though the contract acknowledged the authority of the board with respect to curriculum, there was also a clause recognizing the constitutional rights of teachers. The court stated that the board had the authority to prohibit the assignment of the ten books "since there was no showing that

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[45]Cary v. Board of Education of the Adams-Arapahoe School District, 598 F. 2d 535 (10th Cir. 1979), p. 535.

[46]Bryson and Detty, "Censorship," p. 181.

exclusion was designed to promote a particular religious viewpoint or to exclude any particular type of thinking or book."[47]

Discussion

In January, 1975, the local school board adopted a policy that established a High School Language Arts Text Evaluation Committee, composed of teachers, administrators, students and parents, for the purpose of reviewing existing and new materials for language arts courses. While only one book was rejected by a majority of the group, nine other books were found objectionable by three members who filed a minority report. School board action removed the ten books and mandated the following:

> Books which are not approved for instructional use will not be purchased, nor used for class assignment, nor will an individual be given credit for reading any of these books.[48]

It was agreed that utilization of the banned books by any teacher could result in dismissal from their positions due to insubordination. The court held that according to state law and the collective bargaining agreement, the board of education had complete authority over textual material insofar as decisions were consistent with federal and state constitutions. The removal of the books could not be

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[47]Cary v. Board of Education of the Adams Arapahoe School District, 598 F. 2d 535 (10th Cir. 1799), p. 535.

[48]Ibid., p. 537.

accurately construed to be a waiver of the protected rights of the individual teachers.

Citing Mercer v. Michigan State Board of Education,[49] Justice Logan reminded the court of the following:

> [A] teacher does not have a right, Constitutional or otherwise, to teach what he sees fit, or to overrule the parents' decision as to which courses their children will take, unless, of course, the State has in some manner delegated this responsibility to the teacher.[50]

The litigation was thus perceived to be a struggle between the authority of the school board to determine curriculum and the academic freedom of teachers in classroom expression. While recognizing the authority of the board to determine curriculum and principal textbooks, the teachers maintained that "once the courses have been approved the teachers' 'right of academic freedom includes the right to use non-obscene materials electively in elective courses taught to high school students.'"[51] The court rejected the arguments of the teachers and reaffirmed the board's authority by stating that "these local decision-makers may determine what subjects are taught, even selecting ones which promote a particular viewpoint."[52] Though the personal views of the

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[49]Mercer v. Michigan State Board of Education, 379 F. Supp. 580 (E.D. Mich.), aff'd mem., 419 U.S. 1081, 95 S. Ct. 673, 42 L. Ed. 2d 678 (1974).

[50]Cary v. Board of Education of the Adams-Arapahoe School District, 598 F. 2d 535 (10th Cir. 1979), p. 541.

[51]Ibid., p. 542. [52]Ibid., p. 543.

board members may have been involved, the board still acted within its authority in omitting the books. The court stipulated that the decision "does not prohibit mention of these books in class, nor treatment by the teacher of the books as examples of contemporary poetry, literature or American masters."[53]

Bicknell v. Vergennes Union High School Board of Directors, 475 F. Supp. 615 (D. Vt. 1979), aff'd, 638 F. 2d 438 (2nd Cir. 1980)

Facts

A coalition of students, parents, library employees, and the Right to Read Defense Fund brought suit against the school district for removing two books from the library. The removal allegedly was violative of the First Amendment rights of students and the due process rights of the students and school librarian.

Decision

After the district court dismissed the complaint, an appeal was made to the United States Court of Appeals for the Second Circuit. Justice Newman, in writing the majority opinion, insisted that "there was no First Amendment violation in removing the books on the basis of vulgarity and indecency of language."[54] Furthermore, neither the students

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[53]Ibid., p. 544.

[54]Bicknell v. Vergennes Union High School Board of Directors, 638 F. 2d 439 (2nd Cir. 1980), p. 439.

nor the librarian had the due process right to a hearing before the removal. The evidence revealed that the board had not reprimanded or dismissed the school librarian, therefore a due process hearing was not required.

Discussion

Due to a controversy concerning certain books in the Vergennes Union High School library, a written policy, entitled the "School Library Bill of Rights for School Library Media Center Program," was enacted defining the rights and responsibilities of students, parents, staff members, and the school's board of directors. Several months later, parents objected to alleged vulgar and indecent language in Dog Day Afternoon by Patrick Mann and The Wanderers by Richard Price. Board action placed the former book on a restricted shelf and removed the Price novel from the library. The librarian was informed that the purchase of major works of fiction would be prohibited and "that any book purchases other than those in the category 'Dorothy Canfield Fisher, science fiction and high interest-low vocabulary' must be reviewed by the school administration in consultation with the Board."[55]

This case was decided on the same day as Pico[56] by the same three justices. In contrast to Pico, however, the court

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[55]Ibid., p. 441.

[56]Board of Education, Island Trees Union Free School District No. 26 v. Pico, 638 F. 2d 404 (2d Cir. 1980).

ruled that the members of the board did not act because of political motivation, but removed the books "because of vulgarity and obscenity."[57] Justice Newman in writing the majority opinion summarized as follows:

> [T]he decision to remove is unlawful when the determination of whether the books are vulgar or indecent is made solely on the basis of Board members' personal tastes and values. But so long as the materials removed are permissibly considered to be vulgar or indecent, it is no cause for legal complaint that the Board members applied their own standards of taste about vulgarity.[58]

Justice Sifton, a member of the Pico majority, filed a dissenting opinion in which he stated that the distinctions drawn between the two cases had no valid basis. He asserted that "access to such material should not be denied to plaintiffs in a fashion or based on criteria of such indefiniteness and ambiguity as to strike not at the vulgarities and indecencies in the books, but rather at the ideas the books express."[59]

Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982).

Facts

The local school board received numerous complaints about the use of a film, "The Lottery," and its accompanying trailer film. The films were based on a short story by

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[57] Bicknell v. Vergennes Union High School Board of Directors, 638 F. 2d 439 (2nd Cir. 1980), p. 441.

[58] Ibid. [59] Ibid., p. 442.

author Shirley Jackson in which the citizens of a small town randomly selected one person each year to be stoned to death. On February 21, 1978, an informational meeting was held in which both films were shown to concerned parents and a rationale for their inclusion in the curriculum was presented. Soon afterwards, three parents filed formal Citizens' Requests for Reconsideration of Instructional Materials, requesting that the films be purged from the curriculum. Objections to the films were based on the following three criteria: (1) the "'theme or purpose' of this film was 'the breakdown of family values and tradition'";[60] (2) the "films may cause students to 'begin to question their own family loyalties'";[61] and (3) the films' method of presentation "'accentuates its brutality and senselessness in our times.'"[62]

Upon appeal, the Committee suggested that the film be used only at the high school level and that parents be allowed to exclude their children from viewing it. The board of education, however, rejected the recommendation and voted to completely eliminate the film from the curriculum. Several students sued the district and the federal district court held that the elimination of the film from the curriculum was unconstitutional. The board appealed the ruling.

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[60]Pratt v. Independent School District No. 831, Forest Lake, Minnesota, 670 F. 2d 771 (8th Cir. 1982), p. 774.

[61]Ibid. [62]Ibid.

Decision

On appeal, the Eighth Circuit Court of Appeals, with Justice Heaney writing the opinion, affirmed the decision of the lower court and held that the film had been eliminated because its religious and ideological content was offensive to some community members, and therefore the ban was an unconstitutional violation on freedom of speech. While a board does have the authority to decide on curriculum issues and content, it does not have absolute power to remove materials from the curriculum. It was concluded that the board could not interfere with the students' First Amendment right to receive information unless a reasonable and substantial government interest existed. Such was not the situation in this case.

Discussion

The court reasoned that the objections of the board of education had "religious overtones."[63] The notion that the films graphically portrayed violence was rejected because it was not supported by the facts. There was only one scene in the two films that depicted physical violence and that scene was brief. The court also pointed out that no system-wide review of violence in the curriculum had been conducted by the board. In fact there was no evidence that any curriculum material had been previously removed in the district due to excessive violence. Finally, the sequence of events

[63] Ibid., p. 776

suggests that the film was removed only because of community concerns about the potential negative impact that the films might have on the religious and family values of the students. The board of education voted to ban the films without giving reasons for its decision. It was only after the district court requested reasons for the board's actions that the violence rationale was offered.

Judge Heaney concluded that the appellant had failed to carry its burden of establishing that a "substantial governmental interest existed for interfering with the students' right to receive information. Hence, the board's action violated the First Amendment."[64] The school board based its decision on the assumption that material offensive to some citizens must be purged from the curriculum. This was an erroneous and unconstitutional supposition.

Judge Heaney concluded as follows:

> "The Lottery" is not a comforting film. But there is more at issue here than the sensibilities of those viewing the films. What is at stake is the right to receive information and to be exposed to controversial ideas--a fundamentalist First Amendment right. If these films can be banned by those opposed to their ideological theme, then a precedent is set for the removal of any such work.[65]

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[64] Ibid., p. 779.

[65] Ibid.

Board of Education, Island Trees Union Free School District, No. 26 v. Pico, 474 F. Supp. 387 (E.D. N.Y. 1979), rev'd and remanded, 638 F. 2d 404 (2d Cir. 1980), aff'd, 457 US.. 853 (1982)

Facts

Three members of the local school board returned from a conference of a politically conservative organization, Parents of New York United (PONYU), and subsequently persuaded a majority of the board that certain books in the district's media centers were "anti-American, anti-Christian, anti-Semitic, and just plain filthy."[66] After rejecting the recommendations of a board appointed committee of parents and school staff, the school board ordered the removal of nine books from a school library. Legal action was brought against the board of education on the basis that their actions had violated the First Amendment rights of the plaintiffs.

Decision

After the federal district court dismissed the class action suit, an appeal was made to the Second Circuit Appeals Court. At the appellate level, Justice Sifton stated that the actions of the school board constituted "an unusual and irregular intervention in the school libraries' operations by persons not routinely concerned with such matters."[67]

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[66]Board of Education, Island Trees Union Free School District, No. 26 v. Pico, 457 U.S. 853 (198), p. 853.

[67]Pico v. Board of Education, Island Trees Union Free School District, No. 26, 474 F. Supp. 387 (E.D. N.Y. 1979), p. 414.

In a split decision, the Second Circuit Court of Appeals reversed the judgment of the lower court and remanded the action for a trial based on the allegations of the respondents. After receiving a request from the school board members, the United States Supreme Court agreed to hear the case. In a narrow five to four decision, the majority opinion of the appellate court was affirmed. Justice Brennan, writer of the majority opinion, was joined by Justices White, Blackmun, Marshall, and Stevens.

Discussion

The facts in this case provide a distinct example of how the actions of conservative groups can lead to subsequent censorship activities in the public schools. Participants at the conservative political conference of PONYU returned with a list of books that were deemed by the organization to be inappropriate for public school students. Upon investigation, several board members discovered that eleven of the books were found in either the libraries of the school district or on reading lists for students. The board, acting against the advice of the superintendent, ordered principals to remove the questionable books from the libraries and deliver them to the central office so that board members could review the materials.

After examining excerpts from the books, school board members were dismayed at the findings. They objected to

the use of profanity, references to sex, and anti-Christian values located in many of the books. A committee of four staff members and four parents was appointed to read the listed books and make recommendations to the school board. The board of education rejected the committee's report without explanation and decided to return one book to the high school library without restriction, make another book available with parental permission, and remove the remaining nine books from the curriculum.[68]

Justice Brennan emphasized that the case raised no constitutional issues regarding the authority of a school board to determine curriculum. Additionally, the case did not involve classroom intrusion, textbooks, or the acquisition of books. "Rather, the only action challenged in this case," asserted Justice Brennan, "is the removal from school libraries of books originally placed there by the school authorities, or without objection from them."[69] The limited scope of the case required the resolution of two issues. First, the Supreme Court had to determine if the First Amendment imposed any limitations on the discretion of the school board to remove books from school libraries. Second, if limitations did exist, the Court must decide if the school board exceeded its authority.[70]

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[68]Board of Education, Island Trees Union Free School District, No. 26 v. Pico, 457 U.S. 853 (1982), p. 858.

[69]Ibid., p. 862. [70]Ibid., p. 863.

Recalling the Tinker[71] decision, Justice Brennan proclaimed that

> students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" and therefore local school boards must discharge their "important, delicate, and highly discretionary functions" within the limits and constraints of the First Amendment.[72]

The Constitution, he affirmed, does guarantee to individuals the right to receive ideas and information. Students therefore have clearly protected First Amendment rights to freedom of expression and the right to receive ideas and information. "Of course all First Amendment rights accorded to students," avowed Justice Brennan, "must be construed 'in light of the special characteristics of the school environment.'"[73]

Justice Brennan maintained that utilization of the Island Trees school libraries was a voluntary choice by the students. He noted that a "school library, no less than any other public library, is 'a place dedicated to quiet, to knowledge, and to beauty.'"[74] Students must be guaranteed the right to use such facilities for their own self-education. Whether the removal of the books was violative of the First Amendment rights of the students would depend entirely on the

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[71]Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

[72]Board of Education, Island Trees Union Free School District, No. 26 v. Pico, 457 U.S. 853 (1982), p. 865.

[73]Ibid., p. 868. [74]Ibid.

motivation behind the actions of the school board members. If the school board intended by their removal decision to deny student access to ideas with which they disagreed, then the action would be deemed unconstitutional. In conclusion, the majority agreed

> that school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."[75]

Having thus determined that there are limitations on the discretion of school boards to remove library books, the Court turned attention to the affidavits and other evidentiary materials to determine if the school board had exceeded those limitations. Ruling in the affirmative, the Court emphasized that the district did not have a policy for dealing with the review of controversial materials. In the absence of a well defined procedure, the board rejected the recommendations of both the superintendent and the appointed book review committee. The Court further argued that even though the removed books were allegedly obscene, one of the books, A Reader for Writers, was removed even though no such language was contained in the book.[76] Justice Brennan also asserted that the action of the board was based on the fact that PONYU had identified the books on a hit list, but the

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[75]Ibid., p. 872. [76]Ibid., p. 873.

school board failed to conduct an independent review of the material. In view of the evidence, the Court concluded that the "removal procedures were highly irregular and ad hoc--the antithesis of those procedures that might tend to allay suspicions regarding petitioners' motivations."[77]

Justice Blackmun stated that the primary issue was one of balancing the authority of states to regulate education with the First Amendment freedoms of students. He concluded that the proper balance could be achieved as follows:

> [S]chool officials may not remove books for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials' disapproval of the ideas involved.[78]

Evolution-Creation Science Controversy

Daniel v. Waters, 399 F. Supp. 510 (M.D. Tenn. 1975), 515 F. 2d 485 (6th Cir. 1975).

Facts

In 1973, a newly enacted Tennessee statute required that all public school biology textbooks that dealt with the "origins or creation of man and his world"[79] carry a disclaimer statement that the theory was not "represented to be scientific fact."[80] The law also required the inclusion of the Genesis account of creation but declared the Bible to

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[77] Ibid., p. 875. [78] Ibid., p. 854.

[79] Daniel v. Waters, 515 F. 2d 485 (6th Cir. 1975), p. 487.

[80] Ibid.

be a reference book and thus "shall not be required to carry the disclaimer . . . provided for textbooks."[81] Forbidden by law was the teaching of all satanical or occult beliefs of human origin. A complaint was filed alleging the unconstitutionality of the statute.

Decision

The United States Court of Appeals for the Sixth Circuit held the Tennessee law to be violative of the United States Constitution since establishment of religion is prohibited. Justice Edwards, in writing the majority opinion, stated the following:

> The requirement that some religious concepts of creation, adhered to presumably by some Tennessee citizens, be excluded on such grounds in favor of the Bible of the Jews and the Christians represents still another method of preferential treatment of particular faiths by state law and, of course, is forbidden by the Establishment Clause of the First Amendment.[82]

Discussion

The Tennessee law did not expressly forbid the teaching of evolution, but did give preferential treatment to the Genesis account of creation by not requiring a disclaimer. Any account of creation based on scientific research or the reasoning of man was thus relegated to second class status. The court affirmed that government in a democracy must be neutral in matters of religion. "It may not be hostile to

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[81] Ibid. [82] Ibid., p. 491.

any religion or to the advocacy of no-religion," maintained Justice Edwards, "and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite."[83] While expressing hesitancy about intervening in the daily operation of school systems, the court indicated that such actions must be undertaken if constitutional protections were ignored.

The court reasoned that it would be impossible for the Tennessee Textbook Commission to determine which religious theories should be considered satanical or occult. Justice Edwards asserted that throughout history "the God of some men has frequently been regarded as the Devil incarnate by men of other religious persuasions."[84]

McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (E.D. Ark. 1982).

Facts

On March 19, 1981, Governor Frank White of Arkansas signed into law a statute mandating "balanced treatment of creation science and evolution science"[85] in public school classrooms. The law was challenged as a violation of the First Amendment requirement for the separation of church and state. The American Civil Liberties Union accepted the case

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[83]Ibid., p. 490. [84]Ibid., p. 491.

[85]McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (E.D. Ark. 1982), p. 1255.

on behalf of twenty-three plaintiffs, including several religious organizations and twelve clergymen.

Decision

Justice Overton of the district court ruled that the Arkansas statute was an attempt by the legislature to introduce the "Biblical version of creation into public school curriculum"[86] and thus was a violation of the federal Constitution. In using Lemon,[87] the court concluded that the law had no secular purpose, served to advance religion, and created excessive entanglement. The statute thus failed all parts of the tripartite test.

Discussion

Paul Ellwanger, the initiator of the balanced treatment proposal, did not personally believe in the scientific merits of creation as indicated by the following:

> While neither evolution nor creation can qualify as a scientific theory, and since it is virtually impossible at this point to educate the whole world that evolution is not a scientific theory, we have freely used these terms--the evolution theory and the theory of scientific creationism--in the bill's text.[88]

Nevertheless, Ellwanger emphasized to supporters of the measure that creationism must be stressed as a science and not as religion. He urged his co-workers not "to get sucked

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[86] Ibid.

[87] Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

[88] McLean v. Arkansas Board of Education, 529 F. Supp. 1255 (E.D. Ark. 1982), p. 1261.

into the 'religion' trap of mixing the two together, for such mixing does incalculable harm to the legislative thrust."[89]

The bill was introduced in the Arkansas Senate by a fundamentalist legislator, James Holsted. He did not consult with the state attorney general, science educators, scientists, or the State Department of Education prior to the bill's introduction. The recommendation was nevertheless approved, without any referral to a Senate committee, after a few moments of discussion. In the House of Representatives, the bill was referred to the Education Committee which conducted a fifteen minute hearing. The bill, Act 590, was hastily enacted into law. Justice Overton, after reviewing the evidentiary materials, concluded that the statute had no secular purpose, but was enacted in an attempt to teach the Genesis account of creation in the schools under the guise of science. The court noted the long history of official opposition to evolution in Arkansas.

The court next examined the legitimacy of using a two model approach to explain the origins of life. Proponents of scientific creationism tend to reduce the controversy to a choice between evolution and creation. All scientific evidence that fails to support evolution is characterized as being supportive of creationism. Avowing disagreement with this dualistic concept, Justice Overton stated that

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[89]Ibid., p. 1262.

"the theory of evolution assumes the existence of life and is directed to an explanation of how life evolved."[90] As such, evolution does not deal with the origin of life and does not "presuppose the absence of a creator or God."[91]

The court cited a lack of articles in professional scientific journals and faulty methodology by the creationists as further proof that creationism cannot be construed as science. "A theory that is by its own terms dogmatic, absolutist and never subject to revision," claimed Justice Overton, "is not a scientific theory."[92] The court was critical of the evidence supporting creation science on the basis that most of the data were not new, but simply an attempt to discredit the theory of evolution. "Since creation science is not science," proclaimed Justice Overton, "the conclusion is inescapable that the only real effect of Act 590 is the advancement of religion."[93] The statute thus failed part two of the tripartite test.

Finally, the court reasoned that the Genesis account of creation could not be taught in a secular manner. The problem of excessive entanglement could not be avoided by implementation of the law, thus the third portion of the Lemon test was not met.

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[90] Ibid., p. 1266. [91] Ibid.

[92] Ibid., p. 1269. [93] Ibid., p. 1272.

A final argument by the defendants posed the assertion that evolution was a religion that could not be taught in the public schools without violating the First Amendment rights of students. Justice Overton responded as follows:

> Assuming for the purposes of argument, however, that evolution is a religion or religious tenet, the remedy is to stop the teaching of evolution; not establish another religion in opposition to it. Yet it is clearly established in the case law, and perhaps also in common sense, that evolution is not a religion and that teaching evolution does not violate the Establishment Clause.[94]

Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), reh. den. 779 F. 2d 225 (5th Cir. 1985), jurisdiction noted 106 S. Ct. 1947 (case no. 85-1513, 1987).

Facts

The Louisiana legislature enacted a statute entitled "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction" which stated that no school would be required to provide instruction on theories of the origins of mankind, but stipulated that "if a school chooses to teach either evolution-science or creation-science, it must teach both, and it must give balanced treatment to each theory."[95] A coalition of parents, religious leaders, and educators challenged the law as a violative of both the state and federal constitutions.

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[94]Ibid., p. 1274.

[95]Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), p. 1253.

Decision

The United States District Court for the Eastern District of Louisiana ruled the law to be a violation of the state constitution, but on appeal, the decision was reversed and remanded. Justice Adrian Duplantier, Jr. of the district court, then "reasoned that the doctrine of creation-science necessarily entailed teaching the existence of a divine creator and the concept of a creator was an inherently religious tenet."[96] The court thus held that the statute was intended to promote religion and therefore represented a violation of federal law. The Fifth Circuit Court of Appeals affirmed the judgment. In a seven to two decision, the U.S. Supreme Court further affirmed the ruling.

Discussion

Plaintiffs in the case contended that the Louisiana statute was "simply another effort by fundamentalist Christians to attack the theory of evolution and to incorporate in the public school curriculum the Biblical theory of creation described in the Book of Genesis."[97] The state maintained that the law had the secular purpose of promoting academic freedom.

The Fifth Circuit Court of Appeals did not deny that creationism might be supported by scientific data, but also acknowledged that the theory of creation was espoused by many

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[96]Ibid., p. 1254. [97]Ibid.

religious groups. After reviewing Karen B.[98] and Lubbock,[99] the court was convinced that the statute had no secular purpose. Instead Justice Jolly asserted "the Act continues the battle William Jennings Bryan carried to his grave"[100] and was intended to "discredit evolution by counterbalancing its teaching at every turn with the teaching of creationism, a religious belief."[101] On this basis the statute was ruled to be a violation of the first prong of the Lemon test[102] and was thus unconstitutional.

In a seven to two decision, the Supreme Court ruled that the primary intent of the state legislature "in 1981 'was clearly to advance the religious viewpoint that a supernatural being created humankind' and not to advance the cause of academic freedom as the state maintained."[103] Justice Brennan, in writing the majority opinion, stated that "Out of many possible science subjects taught in the public schools, the legislature chose to affect the teachings of the one scientific theory

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[98]Karen B. v. Treen, 653 F. 2d 897 (5th Cir. 1981), aff'd 102 S. Ct. 1267 (1982).

[99]Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), reh. denied 680 F. 2d 424 (5th Cir. 1982), cert. denied 103 S. Ct. 800.

[100]Aguillard v. Edwards, 765 F. 2d 1251 (5th Cir. 1985), p. 1257.

[101]Ibid.

[102]Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

[103]Tom Mirgo, "Creationism Law in Louisiana is Rejected by Supreme Court," Education Week 6, No. 39 (June 24, 1987):1.

that historically has been opposed by certain religious sects."[104] The Court ascertained that the statute failed to meet all three parts of the tripartite test.

Justice Scalia filed a dissenting opinion suggesting that the Court had an "intellectual predisposition created by the facts and legend"[105] of the famous 1925 Scopes trial. In expressing his astonishment, Justice Scalia concluded the following:

> We have . . . no adequate basis for disbelieving the purpose set forth in the act itself, or for concluding that it is a sham enacted to conceal the legislators' violation of their oaths of office.[106]

Prayer

Meltzer v. Board of Public Instruction of Orange County, Florida, 577 F. 2d 311 (5th Cir. 1978), cert. denied, 439 U.S. 1089 (1979)

Facts

Several practices in the Orange County Public Schools were challenged by a contingent of parents as a violation of their constitutional rights. First, the system allowed each day to begin with devotional exercises that included reading passages from the Bible. Next, the school district had a longstanding policy of allowing a religious group, the Gideons, to distribute Bibles to students while at school. Initially, Gideons visited the classrooms, but later they positioned

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[104] Ibid., p. 6. [105] Ibid. [106] Ibid.

themselves in a highly visible area and allowed students to approach them for materials. Finally, Chapter 231.09(2) of the Florida Statutes states that all instructional staff members of the public schools shall

> labor faithfully and earnestly for the advancement of the pupils in their studies, deportment and morals, and embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty and patriotism and the practice of every Christian virtue."[107]

Decision

The ruling of the United States Court of Appeals for the Fifth Circuit was handed down in March 1977 and a rehearing en banc was granted soon thereafter. In effect, the practice of Bible reading and prayer was deemed unconstitutional, while the "Christian virtue" statute and Bible distribution was allowed to stand. The United States Supreme Court, in 1980, decided to allow the ruling to stand.

Discussion

After the trial court denied relief to parents, an appeal was made to the United States Court of Appeals for the Fifth Circuit. The appellate court ascertained that the Florida statute was not likely to be enforced, thus there was no need for an injunction. The case was reversed and remanded to the district court. Fourteen months later, it became apparent that the school board had made no adjustments in the policy

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[107]Meltzer v. Board of Public Instruction of Orange County, Florida, 577 F. 2d 311 (5th Cir. 1977), p. 311.

permitting Bible reading, devotions and the distribution of Bibles.

During a second round of appeals, the court ruled that the continuous threat of enforcing the policy created a "continuous and brooding presence."[108] Bible reading and devotional activities were declared unconstitutional as well as the policy of allowing the Gideons to distribute Bibles from a central location on the school campus. It was also stated that "the 'Christian virtue' statute is unconstitutional as presently worded, and the statute would probably be constitutional if the word 'Christian' was excised."[109] Although the appellate court panel ruled that all three measures were a violation of the establishment clause, upon a rehearing before the full appellate court only the Bible reading and prayer were declared invalid. The trial court's denial of injunctive and declaratory relief regarding Bible distribution and the Florida statute were affirmed by a divided appeals court decision. The ruling was left intact by the Supreme Court.

Hall v. Board of School Commissioners of Conecuh County, 656 F. 2d 999 (5th Cir. 1981).

Facts

Rufus Hall brought suit challenging the following two activities as a violation of the establishment clause of the

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[108] Meltzer v. Board of Public Instruction of Orange County, Florida, 548 F. 2d 559 (5th Cir. 1978), p. 559.

[109] Ibid.

First Amendment: "(1) permitting students to conduct morning devotional readings over the school's public address system, and (2) teaching an elective Bible Literature course in a manner which advanced religion."[110]

Decision

The district court dismissed the action as moot because the school district had ceased the morning devotionals due to impending litigation and also because the Bible Literature class was not presently being taught at Repton High School. Justice Roney of the United States Court of Appeals for the Fifth Circuit concluded that the trial court had erred in judging the case to be moot. Both practices were ruled unconstitutional.

Discussion

There was no disagreement that the practice of conducting morning devotionals was unconstitutional. The school district allowed the practice to continue until challenged, but then immediately halted the exercise. The superintendent testified that he knew the devotional activities were a violation of the law.

The Bible Literature course, though not taught at the time of the trial, had been taught during the 1978-1979 school year by an ordained Baptist minister, Burt Wiggers. A state

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[110]Hall v. Board of School Commissioners of Conecuh County, 656 F. 2d 999 (5th Cir. 1981), p. 1000.

approved textbook, The Bible for Youthful Patriots, Parts I and II, was issued to all students in the class. Free copies of the Bible were provided by a local citizen. The court concluded that the "Bible Literature course consisted entirely of a Christian religious perspective and within that a fundamentalist and/or evangelical doctrine."[111] It was determined that course exams which required rote memorization of the Bible were not consistent with the methodology of the course as delineated in the guide. Justice Roney stated that "the primary effect of the course was to advance fundamentalist Christianity, clearly a violation of the Establishment Clause."[112]

Collins v. Chandler Unified School Dist., 644 F. 2d 759 (D. Ariz. 1979), 644 F. 2d 759 (9th Cir. 1981), cert. denied, 454 U.S. 863 (1981).

Facts

The Student Council at Chandler High School in Chandler, Arizona, periodically scheduled and conducted student assemblies during the instructional day. With the approval of the principal, during the 1977-1978 and 1978-1979 school years, the student group opened the assemblies with prayer. Citing a violation of First Amendment rights, the parent of a high school student brought action to enjoin the school district from allowing voluntary prayer at the school assemblies.

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[111] Ibid., p. 1001. [112] Ibid., p. 1003.

Decision

The trial court granted the injunction, but refused the plaintiff's request for attorney fees. The plaintiff appealed the denial of expenses, while the school district cross appealed the grant of a permanent injunction. The United States Court of Appeals for the Ninth Circuit affirmed the ruling of the lower court with regard to the constitutionality of the voluntary prayer activities. It reversed and remanded the lower court decision that the plaintiff was not entitled to seek recovery of attorney fees.

Discussion

Chandler officials maintained "that granting students permission to open assemblies with prayer does not amount to a prohibited 'sponsorship' of religious activity but is a reasonable accommodation of students' religious desires."[113] They further argued that attendance at the Student Council sponsored assemblies was voluntary. Justice Tang, citing Engel,[114] reminded school administrators that "neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause."[115] The court drew frequent comparisons to Brandon

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[113]Collins v. Chandler Unified School District, 644 F. 2d 759 (9th Cir. 1981), p. 761.

[114]Engel v. Vitale, 370 U.S. 421 (1962).

[115]Collins v. Chandler Unified School District, 644 F. 2d 759 (9th Cir. 1981), p. 761.

v. Board of Education of Guilderland Central School District,[116] and used the Lemon[117] tripartite test to determine the constitutionality of the Chandler activities. Justice Tang concluded that the prayer had no secular purpose, had the primary effect of advancing religion, and created excessive entanglement.

Karen B. v. Treen, 653 F. 2d 897 (5th Cir. 1981), aff'd 102 S. Ct. 1267 (1982)

Facts

The Jefferson Parish School Board adopted a policy consistent with Louisiana state law that established guidelines for student participation in prayer at school. Under the guidelines "each teacher must ask if any student wishes to volunteer a prayer, and if no student wishes to do so, the teacher may offer a prayer of his own."[118] If the teacher opted not to lead in prayer, then a moment of silent meditation would be observed. Whereas state law permitted as much as five minutes for prayer, the local school district restricted the period to one minute. Jefferson Parish made extensive provisions for excusing students who elected not to

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[116]Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2nd Cir. 1980), cert. denied, 454 U.S. 1123 (1981).

[117]Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

[118]Karen B. v. Treen, 653 F. 2d 897 (5th Cir. 1981), p. 899.

participate in the prayer portion of the daily activities. Parents of students in the district sought declaratory and injunctive relief concerning the state law and the offshoot Jefferson Parish School Board regulations.

Decision

The United States Court of Appeals for the Fifth Circuit, with Justice Clark presiding, overturned the decision of the district court and ruled that the "statute and regulations offend the First Amendment proscription against enactment of laws respecting the establishment of religion."[119] The judgment was affirmed by the U.S. Supreme Court on January 25, 1982.

Discussion

School District officials defended the policy by stating that the "purpose of the school prayer program was to increase religious tolerance by exposing school children to beliefs different from their own and to develop in students a greater esteem for themselves and others by enhancing their awareness of the spiritual dimensions of human nature."[120] Justice Clark, as noted in the following statement, maintained that the purpose of the prayer activity was essentially religious and not secular:

> Prayer is perhaps the quintessential religious practice for many of the world's faiths, and it plays a significant role in the devotional lives of most religious people.

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[119] Ibid. [120] Ibid., p. 900.

> Indeed, since prayer is a primary religious activity in itself, its observance in public school classrooms has, if anything, a more obviously religious purpose than merely displaying a copy of a religious text in the classroom.[121]

The court further concluded that the statute and policies served to advance the establishment of religion and also created excessive government entanglement.

Doe v. Aldine Independent School Dist., 563 F. Supp., 883 (S.D. Tex. 1982)

Facts

An anonymous plaintiff brought suit against the Aldine Independent School District for allowing the recitation and singing of a school prayer on school property. Claiming the practice was violative of the First Amendment prohibition against the establishment of religion, the "plaintiff requested a preliminary injunction, a declaratory judgment, damages, and attorneys fees."[122]

Decision

The District Court with Justice Singleton presiding held that the policy of reciting or singing school prayer violated the establishment clause even if the practice occurred at extracurricular events on the school grounds.

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[121]Ibid., p. 901.

[122]Doe v. Aldine Independent School District, 563 F. Supp. 883 (S.D. Tex. 1982), p. 884.

Discussion

> The words of the controversial prayer are as follows:
>
> Dear God, please bless our school and what it stands for. Help keep us free from sin, honest and true, courage and faith do make our school the victor. In Jesus name we pray, Amen.[123]

The prayer was posted on the wall at the entrance to the gymnasium at Aldine High School and sung or recited at a variety of activities including pep rallies, graduation exercises, and athletic events. The activities did not occur during the instructional day, but were a part of the school sponsored extracurricular program.

The court concluded that the posting of the words over the gym and the encouraging of its recitation failed to satisfy the secular purpose requirement of the first question of the Supreme Court's test. Additionally, the court reasoned that "the natural consequences of these actions would be the advancement of religion by indicating to students that the state advocates religious belief."[124] In reviewing possible excessive entanglement, Judge Singleton noted the similarities to the Lubbock[125] case. Since school facilities were used for religious activity and employees were involved in supervising both the school property and accompanying events, excessive entanglement could not be avoided.

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[123]Ibid. [124]Ibid., p. 887.

[125]Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), reh. denied 680 F. 2d 424 (5th Cir. 1982), cert. denied 103 S. Ct. 800.

Graham v. Central Community School District of Decatur County, 608 F. Supp. 531 (D.C. Iowa 1985)

Facts

For more than twenty years, Central Decatur High School conducted commencement exercises for graduating seniors at the conclusion of each school year. The ceremonies opened with an invocation prayer by a Christian minister and concluded with a Christian minister's benediction. Robert Graham, father of a student who planned to participate in the graduation, raised objections to the religious content of the program on the basis that it infringed on his First Amendment rights. The school board subsequently decided to "cease conducting the baccalaureate ceremony and to grant the Community Ministerial's request that the Ministerial Alliance conduct a separate, voluntary baccalaureate service."[126] The plaintiff brought suit against the district for insisting that the invocation and benediction continue.

Decision

The United States District Court, with Judge Vietor presiding, concluded that the practice of allowing an invocation and benediction at the graduation ceremonies violated the establishment clause of the First Amendment.

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[126]Graham v. Central Community School District of Decatur County, 608 F. Supp. 531 (D.C. Iowa 1985), p. 532.

Discussion

The defendants stressed that the graduation exercise was a voluntary ceremony which seniors were not required to attend in order to receive a diploma. By shifting sponsorship for the activity to the Ministerial Alliance, it was assumed erroneously by school authorities that the activities would pass constitutional muster. Applying the tripartite test, the court concluded that the invocation and benediction served a Christian, but not a secular purpose. This is confirmed in the following statement about Reverend Richard Speight, Jr. of the Ministerial Alliance:

> Reverend Speight considers the purpose of the invocation and benediction that he plans to give at the commencement exercises this coming Sunday to be solely religious. To his understanding they will serve no other purpose. He believes that the participants in the invocation and benediction will be himself, those who accept his invitation to join him, and God.[127]

The trial court also reasoned that the practices in question had the primary effect of advancing religion. Since the plaintiffs did not raise the issue of excessive entanglement, the court did not rule on that issue.

Meditation

Beck v. McElrath, 548 F. Supp. 1161 (M.D. Tenn. 1982)

Facts

The Tennessee General Assembly enacted a statute requiring that every public school class in the state begin the day

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[127]Ibid., p. 533.

with a period of silence not to exceed one minute in duration for the purpose of prayer, meditation, or personal beliefs. Civil action was brought against the state on the grounds that the newly enacted legislation was a violation of the First and Fourteenth Amendments to the United States Constitution.

Decision

The court ruled that the state statute did not meet the requirements of the establishment clause. The law was never intended to be neutral, thus the state was put in the position of favoring and advancing religion.

Discussion

The challenged provision in the new legislation stated the following:

> At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which such class is held shall announce that a period of silence not to exceed one minute of duration shall be observed for meditation or prayer or personal beliefs and during such period, silence shall be maintained.[128]

While the defendants maintained that the statute merely provided for a moment of silence, it is clear from the record that the "overwhelming intent among legislators supporting the bill, including the sponsors, was to establish prayer as a daily fixture in the public schoolrooms of Tennessee."[129]

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[128]Beck v. McElrath, 548 F. Supp. 1161 (M.D. Tenn. 1982), p. 1161.

[129]Ibid., p. 1163.

In the words of one legislator, "If there is one thing the people of this state want, they want prayer in public schools."[130] The court concluded that legislation respecting the establishment of religion was unconstitutional regardless of how popular a measure might be. Since the legislation was not neutral, it had to be struck down as violative of the establishment clause.

Duffy v. Las Cruces Public Schools, 557 F. Supp. 1013 (D.N.M. 1983)

Facts

In 1981, the New Mexico legislative body enacted a statute that provided for the following:

> Each local school board may authorize a period of silence not to exceed one minute at the beginning of the school day. This period may be used for contemplation, meditation or prayer, provided that silence is maintained and no activities are undertaken.[131]

After the Las Cruces Public Schools implemented the moment of silence, Jerry Duffy brought suit against the district challenging the constitutionality of the practice.

Decision

The trial court declared the challenged statute to be a violation of the establishment clause of the federal constitution. Judge Burciaga ascertained that the legislation had

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[130] Ibid., p. 1164.

[131] Duffy v. Las Cruces Public Schools, 557 F. Supp. 101 (D.N.M. 1983), p. 1015.

no secular purpose, impermissibly advanced religion, and resulted in excessive entanglement between church and state.

Discussion

The idea for the legislation originated with William O'Donnell, a state legislator, who approached a high ranking official in the state education department and requested that he draft a bill which would permit students to pray in school. Clearly the intent was to institute prayer in the public schools. The defendants avowed that the inclusion of the words "contemplation" and "meditation" underscored the neutral position of the legislatures with regard to the people's right to freedom of religion. Judge Burciaga was not convinced as indicated by the following statement:

> The Court views the inclusion of these words as a transparent ruse meant to divert attention from the statute's true purpose. Viewed in this light, it can hardly be said that the statute reflects sensitivity to the right to religious freedom. Indeed, it reflects the opposite.[132]

The court ruled therefore that the statute had no secular purpose. Furthermore, it advanced religion in the public schools by permitting a religious exercise on the school campus during the instructional day with teacher supervision. The fact that the atmosphere of silence was maintained by the teachers constituted excessive entanglement.

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[132]Ibid., p. 1019.

Walter v. West Virginia Board of Education, 610 F. Supp. 1169 (D.C. W. Va. 1985)

Facts

The legislative body of the state of West Virginia enacted legislation requiring that public schools "provide a designated brief time at the beginning of each school day for any student desiring to exercise their right to personal and private contemplation, meditation, or prayer."[133] A coalition of parents challenged the constitutionality of the Prayer Amendment as violative of their protected rights as stipulated in the First and Fourteenth Amendments to the federal Constitution.

Decision

Judge Hallahan concluded that the West Virginia constitutional amendment violated the First Amendment rights of the plaintiffs. He granted the request of the plaintiffs for a declaratory judgment and asserted that "nothing in this order prohibits or impedes the right of any West Virginia citizen, young or old, to pray in his or her own manner, any place, anytime."[134] The court concluded that the state, however, could not be placed in the legally untenable position of sponsoring such prayer.

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[133]Walter v. West Virginia Board of Education, 610 F. Supp. 1169 (D.C. W. Va. 1985), p. 1170.

[134]Ibid., p. 1178.

Discussion

Extensive hearings were conducted in this case to determine the effects of the Prayer Amendment. An eleven-year-old Jewish boy testified that the new law had been implemented in his school, but he chose to read a book instead of participating in prayer. His actions provoked questions and ridicule from some classmates who encouraged him to utilize the allotted time for silent prayer. When he attempted to explain his actions, one child remarked that "if I prayed all the time, maybe I could go to heaven with all the Christians when Jesus came for the second time instead of . . . going down with all the other Jews."[135] Another child suggested that the conversation conclude since "Jews weren't worth saving because they had killed Christ."[136]

A twelve-year-old Roman Catholic boy "testified he is afraid to challenge his teacher's directions to stand and pray each morning because he might receive demerits for 'doing wrong or disobeying the teacher.'"[137] Other witnesses testifying in opposition to the Prayer Amendment included representatives of the Lutheran and Moslem faiths. Citing a number of other litigated cases, the court had little difficulty reaching the decision that the legislation was unconstitutional. In spite of significant adverse reaction, the court

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[135]Ibid., p. 1172. [136]Ibid. [137]Ibid., p. 1173.

maintained that the United States Constitution must be upheld even in the face of intimidation.

Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd, 472 U.S. 37 (1985).

Facts

In 1982 the father of three elementary school children in Mobile, Alabama, Ishmael Jaffree, brought suit in the federal district court challenging the constitutionality of three Alabama statutes. The first statute, enacted by the state legislature in 1978, required public school teachers to enforce a one-minute period of silence for the purpose of "meditation."[138] In 1981, the legislature passed a bill that authorized, but did not require, a one-minute period of silence for "meditation or voluntary prayer."[139] The following year, a statute was enacted that authorized teachers in public schools to lead willing students in prayer or in the following prayer prescribed by the legislature:

> Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen.[140]

Upon review, the district court dismissed Jaffree's complaint. The case was appealed to the Eleventh Circuit Court

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[138]Wallace v. Jaffree, 472 U.S. 37 (1985), p. 40.

[139]Ibid. [140]Ibid., p. 41.

of Appeals with respect to the 1981 and 1982 statutes. The circuit court declared both statutes unconstitutional, then the case was further appealed to the United States Supreme Court.

Decision

The Supreme Court, in 1984, affirmed the decision of the lower court and stated that the 1982 Alabama statute was unconstitutional. On June 4, 1985, in a six to three decision, the High Court struck down the 1981 prayer statute as well. Chief Justice Burger and Justices Rehnquist and White cast dissenting opinions.

Discussion

The majority opinion, written by Justice Stevens, indicates that the 1981 statute failed the first part of the tripartite test by having no secular purpose. The proponent of the 1981 law "testified that his purpose in sponsoring 16-1-20.1 was to return voluntary prayer to the public schools."[141] He contended that the law would "provide children the opportunity of sharing in their spiritual heritage of Alabama and of this country."[142] Since the intent was to return prayer to the schools, no secular interest existed and the law was therefore in violation of the Constitution. A further observation by Justice Stevens was that the 1978 statute referred

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[141]Ibid., p. 44. [142]Ibid.

to "meditation" while the 1981 law referred to "meditation or voluntary prayer."[143] The inclusion of prayer in the latter statute characterized it as a favored practice and was therefore not consistent with the policy of government neutrality toward religion.

It is clear, as pointed out by Justice O'Connor, that "no law prevents a student who is so inclined from praying silently in public schools."[144] Only officially sanctioned prayer, not silent prayer, is prohibited by law. Several other conclusions can be derived from the case. First, a moment of silence statute that refers only to meditation and enacted for a secular purpose might not be unconstitutional. Second, a law adopted for solely religious reasons would violate the establishment clause. Finally, a legislative enactment that referred exclusively to prayer as an acceptable activity would be unconstitutional.

Some questions remain unanswered by the 1985 High Court ruling. The opinion "does not state whether a statute or policy adopted for a secular purpose and phrased from the start to authorize both silent meditation and silent prayer would unconstitutionally favor prayer over meditation."[145] Federal courts across the nation have rendered conflicting opinions on the matter.

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[143]Ibid., p. 40. [144]Ibid., p. 67.

[145]Laurie Mesibov, "U.S. Supreme Court Rules on Moment of Silence Statute," School Law Bulletin XVI, No. 3 (Summer 1985):21.

May v. Cooperman, 572 F. Supp. 1561 (1983), 780 F. 2d 240 (3rd Cir. 1985)

Facts

On December 16, 1983, the New Jersey Legislature enacted the following statute after it had been vetoed by the governor:

> Principals and teachers in each public elementary and secondary school of each school district in this State shall permit students to observe a one minute period of silence to be used solely at the discretion of the individual student, before opening exercises of each school day for quiet and private contemplation or introspection.[146]

Conspicuously absent from the legislative enactment were terms such as "prayer" and "meditation" which had been ruled unconstitutional in Wallace v. Jaffree.[147] A coalition of parents brought action for declaratory and injunctive relief and requested that the statute be declared unconstitutional.

Decision

U.S. District Judge Dickinson Debevoise held that the law failed all three parts of the test established by the Supreme Court in a 1971 case[148] for ascertaining whether or not a law is violative of the First Amendment's prohibition on government establishment of religion. Upon appeal to United States Court of Appeals for the Third Circuit, a split

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[146]May v. Cooperman, 780 F. 2d 240 (3rd Cir. 1985), p. 241.

[147]Wallace v. Jaffree, 705 F. 2d 1526 (5th Cir. 1983), aff'd., 472 U.S. 37 (1985).

[148]Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

three judge panel also declared the law unconstitutional in December 1985 because the statute lacked a secular purpose.

Discussion

Proponents of the law contended that the statute permitted but did not require principals and teachers to allow a moment of silence. In addition to being voluntary, the students were not required to pray or meditate, but only to use the time "for quiet and private contemplation or introspection."[149] Legislators maintained that the new law had the secular purpose of "providing a calm transition from nonschool life to school work."[150]

The appellate court disagreed with the lower court's reasoning that the statute advanced religion and created excessive entanglement. Justice Gibbons, writing for the majority, stated that the appellate panel was compelled to rule that the statute lacked a secular purpose, because the district judge's findings to that effect were not clearly erroneous.

New Jersey has a long history of attempting to return prayer to the classrooms. Numerous legislative bills so designed were vetoed by Governors Hughes and Cahill between 1968 and 1976. After 1976, the moment of silence bills omitted reference to prayer.

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[149]May v. Cooperman, 780 F. 2d 240 (3rd Cir. 1985), p. 241.

[150]Ibid., p. 244.

The case has now been accepted by the United States Supreme Court. Parents, teachers, and students who originally challenged the law assert that since the New Jersey Senate and General Assembly withdrew from the suit in May, 1986, the legislators cannot pursue the case as individuals. The High Court will decide whether or not to uphold the lower court rulings on the basis of this technicality.

Religious Meetings

Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2d Cir. 1980), cert. denied, 454 U.S. 1123 (1981)

Facts

Several students at Guilderland High School organized a group in 1978 known as "Students for Voluntary Prayer" and sought permission from the principal to conduct prayer meetings in a classroom without faculty supervision prior to the commencement of classes. After having their request denied, six students filed suit on the basis that their First and Fourteenth Amendment rights to free exercise of religion, freedom of association, equal protection, and freedom of speech had been violated.

Decision

The United States Court of Appeals for the Second Circuit, with Justice Irving Kaufman presiding, ruled that the school board did not violate the free exercise rights of the

students by refusing to permit the communal prayer meetings. Such approval "would have violated the establishment clause by creating an unconstitutional link between church and state."[151] The court further ruled that the school board's refusal did not violate the rights of the students to free speech, equal protection, or freedom of association.

Discussion

Justice Kaufman stated that even if the free speech rights of students were to have been violated, the board of education had a compelling state interest that required them to deny meeting privileges to the students. He further maintained the following:

> Our nation's elementary and secondary schools play a unique role in transmitting basic and fundamental values to our youth. To an impressionable student, even the mere appearance of secular involvement in religious activities might indicate that the state has placed its imprimatur on a particular religious creed. This symbolic inference is too dangerous to permit.[152]

The court refused to be critical of the motives of the students, but stated that allowing prayer meetings in public schools "would contribute to the erosion of principles articulated by our colonial fathers and embraced by religious dissenters for several hundred years."[153] The United States Supreme Court decided not to review the appellate court decision.

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[151]Brandon v. Board of Education of the Guilderland Central School District, 635 F. 2d 971 (2nd Cir. 1980), p. 972.

[152]Ibid., p. 978. [153]Ibid., p. 980.

Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981)

Facts

A student religious group, Cornerstone, wished to conduct public meetings at the University of Missouri-Kansas consisting of prayer, Bible reading, and the discussion of religious experiences. A university regulation, however, banned the use of campus buildings on grounds for religious teaching or worship. Eleven students sought legal redress for their grievances on the basis that the ban violated their rights to free exercise of religion, to equal protection under the law, and to freedom of speech under the First and Fourteenth Amendments.

The federal district court in Chess v. Widmar[154] stated that the university policy was not only permissible, but required by the establishment clause of the federal Constitution. The United States Circuit Court of Appeals for the Eighth Circuit rejected the analysis of the lower court and reversed the decision.

Decision

The United States Supreme Court demonstrated a high degree of unanimity when it affirmed the circuit court's decision in an eight to one vote, with Justice White dissenting. Justice Powell indicated that the basis for the decision was narrow. In the majority opinion he asserted the following:

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[154]Chess v. Widmar, 480 F. Supp. 907 (1979).

> Having created a forum generally open to student groups, the University seeks to enforce a content-based exclusion of religious speech. Its exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral, and the University is unable to justify this violation under applicable constitutional standards.[155]

Discussion

The Supreme Court ascertained that the university had an extensive program of student activities and officially recognized over one hundred student groups. The university thus created an open forum for student groups. The High Court ruled that it was discriminatory to exclude from such a forum any group based on the religious content of the group's speech unless it could be demonstrated that "its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."[156] Such was not the situation in this case.

In order to determine if a constitutional violation had occurred, the Court applied the Lemon[157] tripartite test. The Supreme Court concluded that the first and third criteria are easily met by allowing open access for any student group. The Court further asserted that the primary effect of a public forum was not to advance religion, thus the second hurdle was cleared. It was further stated that since "an open forum

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[155]Widmar v. Vincent, 454 U.S. 263 (1981), p. 263.

[156]Ibid.

[157]Lemon v. Kurtzman, 403 U.S. 602 (1971).

in a public university does not confer any imprimatur of State approval on religious sects or practices"[158] and since any impact would be both incidental and minimal, the decision of the appellate court could be affirmed.

In an effort to set limits on the ruling, the Court noted the following:

> University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the university's policy is one of neutrality toward religion.[159]

The implication was thus made that the ruling might not apply to younger students who are more impressionable. The decision also upheld the university's authority to set restrictions on time, place, and manner of meetings.

Lubbock Civil Liberties Union v. Lubbock Independent School District, 669 F. 2d 1038 (5th Cir. 1982), reh. denied 680 F. 2d 424 (5th 1982), cert. denied 103 S. Ct. 800

Facts

The Lubbock Independent School District adopted a policy that prohibited all activities during the school day that lacked a secular purpose. Students would be allowed, however, to engage in voluntary, student initiated religious activities that were teacher supervised if they took place either before or after the school's instructional day. The Lubbock Civil Liberties Union, which had protested the old policy,

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[158] Widmar v. Vincent, 454 U.S. 263 (1981), p. 274.

[159] Ibid.

brought suit against the district's new policy also on the basis that permitting voluntary student religious activities was a violation of the establishment clause of the First Amendment.

Decision

When the trial court held that the new policy was not unconstitutional because it was a policy of neutrality that permitted all types of voluntary student meetings, the Lubbock Civil Liberties Union appealed. The United States Circuit Court of Appeals for the Fifth Circuit reversed the lower court decision by applying the tripartite test to determine the constitutionality of the district's policy.

Discussion

The Fifth Circuit reviewed the past history of the school district and discovered a long record of promoting religion through distribution of Gideon Bibles in the elementary schools, classroom prayers led by staff members, and morning Bible readings over the school public address systems. These practices continued until 1979 when challenges began to surface. The school board adopted a new policy that they believed would pass legal muster, but still permit student groups to meet.

Upon analysis, however, the Fifth Circuit concluded that the district's new policy failed each part of the tripartite test. First, the policy did not have a secular nature

because the contested policy was located in the midst of a general policy on religious activities and thus appeared to be expressly designed to permit and encourage religious meetings. While the school district stated that the purpose of the policy was to encourage the development of leadership and communication skills, the court asserted that these goals could be accomplished through secular methods.

The court further concluded that the policy was unconstitutional because it advanced religion by allowing religious meetings at a time closely associated with the school day. Finally, the mere fact that teacher supervision was required created an excessive entanglement with religion.

Nartowicz v. Clayton County School District, 736 F. 2d 646 (11th Cir. 1984).

Facts

This civil rights suit in Clayton County, Georgia, alleged that specific school district practices contributed to the establishment of religion in violation of the United States Constitution. In question was the school district's practice of allowing a student religious group, Youth for Christ, to meet on school property under faculty supervision. The district's policy of allowing schools' public address systems and bulletin boards to advertise church events was also being protested on the basis of excessive entanglement. The United States District Court for the Northern District

of Georgia issued an order granting motion for a preliminary injunction barring the practices. The school district appealed the decision.

Decision

The Eleventh Circuit Court of Appeals affirmed the lower court decision and stated that the school district's practice of allowing Youth for Christ to meet on school property with a faculty supervisor,

> when evaluated in light of . . . apparent support of religious assemblies, religious signs, and accouncements of church sponsored activities via bulletin boards and public address systems, had the effect of enhancing or promoting religion in violation of the establishment clause.[160]

The court also concluded that the indiscriminate utilization of bulletin boards and the public address systems of various schools created excessive entanglement with religion.

Discussion

Youth for Christ had been allowed to meet after school on junior high school property for eleven years. A devotion was read at each meeting, but prayer was infrequent and there was no preaching or witnessing at any of the meetings. The court had to decide if this activity had the primary effect of either advancing or inhibiting religion in violation of the law. Testimony by an assistant principal revealed that she scheduled meeting times for the clubs and announced the

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[160]Nartowicz v. Clayton County School District, 736 F. 2d 646 (11th Cir. 1984), p. 646.

schedules over the schools' public address system. The court concluded that the school district's practices had the effect of promoting religion and was thus unconstitutional.

The superintendent testified that his policy permitted the use of schools' public address systems and bulletin boards "to announce church sponsored secular activities and other messages of 'public importance.'"[161] He further asserted that in some cases it might be necessary to inquire about the nature of an event to ascertain if the purpose was secular. Upon closer scrutiny, the court found "no written guidelines in existence to assist administrators at the various schools in determining which messages could properly be announced."[162] Under the circumstances it was concluded that the announcements had the impermissible effect of advancing religion.

Bell v. Little Axe Independent School District No. 70, 766 F., 2d 1391 (10th Cir. 1985)

Facts

Lucille McCord and Joann Bell each had several children attending Little Axe School during the 1980-81 school year. Other students interrogated these children because they voluntarily chose not to attend religious meetings before class every Thursday morning. The parents believed that undue pressure was exerted on their children and therefore

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[161] Ibid., p. 649. [162] Ibid.

sued the Little Axe Independent School District, the school board, and several administrators for endorsing practices that violated their First Amendment rights. Bell and McCord initially sought injunctive relief against the district for allowing religious meetings at school and the distribution of Bibles, but later sought to have the Oklahoma voluntary prayer statute declared unconstitutional. When the school board adopted an equal access policy, Bell and McCord also challenged the new initiative and sought restitution for alleged civil rights violations.

The district court

> enjoined the religious meetings, found the Bible distribution claim to be moot, determined that equal access policy was not facially unconstitutional and that the state prayer statute was not at issue, and refused to award either compensatory or punitive damages.[163]

Decision

The Tenth Circuit Court of Appeals, with Justice Seymour presiding, affirmed in part, and reversed and remanded in part the decision of the lower court. The Court of Appeals held as follows:

> (1) parents, who had moved from school district and enrolled their children in a neighboring district, had standing to bring the action; (2) religious meetings were properly enjoined; (3) equal access policy promulgated by district was unconstitutional insofar as school district or school construed policy to permit concerted religious activity on school grounds during school day;

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[163]Bell v. Little Axe Independent School District No. 70, 766 F. 2d 1391 (10th Cir. 1985), p. 1391.

> (4) discretion was not abused in refusing to enjoin enforcement of prayer, statute or Bible distribution; (5) parents were entitled to an award of compensatory damages for violation of their First Amendment rights, without proof of consequential harm; and (6) action would be remanded for reconsideration of issue of punitive damages.[164]

Discussion

Several teachers were supervising and participating in religiously oriented meetings for students each Thursday between 8:00 and 8:25 a.m. Students who chose to attend the meetings, initially known as the "Son Shine Club," were permitted to go into the building when their bus arrived, while non-participants were required to remain outside except during bad weather. Meetings were advertised in school publications and by posters in the halls. Speakers included local athletes, ministers, and others with a Christian background.

Upon receipt of the plaintiffs' complaint, the school board voted to continue the meetings until they were declared illegal. Seven months later they adopted an equal access policy to regulate student use of school facilities. The school disavowed sponsorship of the group and allowed a student committee to solicit speakers. The format, however, remained basically the same.

Both families became victims of extreme harassment and eventually moved to an adjoining school district. In a

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[164]Ibid., p. 1392.

review of case history, Justice Seymour noted the open forum concept presented in Widmar v. Vincent,[165] and reviewed the notion of a limited open forum as discussed in Bender v. Williamsport.[166] Justice Seymour stated the following:

> The reservations expressed in Bender apply with even greater force to an elementary school, where the curriculum is far more circumscribed. More importantly, most school chilcren are unable to appreciate or initiate a wide diversity of viewpoints, as demonstrated by the relatively few student organizations that actually meet at Little Axe School, such as Girl Scouts, Boy Scouts, and 4-H Clubs.[167]

The court concluded that the school district had created a limited forum. Next the task was to determine "whether the Establishment Clause is a sufficiently compelling interest to warrant the injunction against the religious meetings at issue."[168]

Using the tripartite test, the court concluded that the meetings had the primary effect of advancing religion, had no secular purpose, and involved excessive entanglement. The court expressed great concern particularly because an elementary school was involved. "Elementary schoolchildren are vastly more impressionable than high school or university

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[165]Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

[166]Bender v. Williamsport Area School District, 741 2d 538 (3rd Cir. 1984), 106 S. Ct. 2083 (1986).

[167]Bell v. Little Axe Independent School District, 766 F. 2d 1391 (10th Cir. 1985), p. 1401.

[168]Ibid., p. 1402.

students," asserts Justice Seymour, "and cannot be expected to discern nuances which indicate whether there is true neutrality toward religion on the part of a school administration."[169]

May v. Evansville-Vanderburgh School Corp., 787 F. 2d 1105 (7th Cir. 1986)

Facts

Beginning in 1981, Mary May and two other evangelical Christians agreed to meet between 7:25 and 7:45 a.m. every Tuesday morning on the premises of Harper Elementary School where they were employees. The purpose of the gatherings was to pray, sing hymns, and share experiences. Students were not allowed to attend the meetings which took place prior to the time staff members were required to report to work. The administration was unaware of the meetings until 1983 when Mrs. May requested that the new principal include a notice about the meetings in a memo. He not only denied the request, but ordered a halt to the meetings. Local school board members concurred in the principal's decision. Mrs. May sued the board and sought to enjoin the ban on religious meetings as well as $300,000 in damages on the premise that her constitutional right to free speech had been denied. After both sides moved for summary judgment, the district court judge granted the motion of the defendants and dismissed the complaint.

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[169]Ibid., p. 1404.

Decision

Justice Posner of the Seventh Circuit Court of Appeals concluded that the teachers did not have a constitutional right to conduct prayer meetings at school prior to the arrival of students. It was discovered that school authorities had consistently prohibited the use of school facilities for religious as well as most other non-business activities. The decision of the district court was thus affirmed.

Discussion

As an employee, Mrs. May stated that she had a right to exercise free speech on the school premises. Furthermore, she asserted that by permitting meetings on all subjects except religion, a public forum was created and the exclusion of religious discussions was therefore discriminatory. Justice Posner concluded that

> the workplace is for working and not, unless the employer consents, for holding meetings at which employees can discuss matters of great importance to themselves, perhaps to society as a whole, but not to the employer.[170]

It is reasoned that if the right to meet was granted to Mrs. May and her group, private citizens in the community would have the same right since educators are not, as a class, a group with greater privileges than the rest of the community.

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[170]May v. Evansville-Vanderburg School Corp, 787 F. 2d 1105 (7th Cir. 1986), p. 1110.

Justice Posner asserted that

> the administration of a public school is difficult enough without a federal court's telling school administrators that in addition to running a school they must provide a forum for their employees to hold meetings on the political, social, and religious issues of the day.[171]

On the second point of contention, the court had to determine if all non-school related meetings were forbidden, or only religiously oriented meetings. Neither Harper School nor the school district had a written policy regulating the utilization of school facilities for various types of meetings. Practice did seem to substantiate the claim that an unwritten policy existed that prohibited religious groups from meeting on campus. While acknowledging that the evidence is somewhat inconclusive, the court stated that the plaintiff must have demonstrated that school officials created a public forum. Mrs. May failed to clearly prove this issue.

Bender v. Williamsport Area School District, 741 2d 538 (3rd Cir. 1984), 106 S. Ct. 2083 (1986)

Facts

At Williamsport Area High School, an assemblage of students sought permission to organize a group known as Petros which would meet on school premises twice weekly for the purpose of "aiding each other in his social, emotional and intellectual personal growth and development by prayer, the application of God's Holy Word to their problems and sharing

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[171] Ibid., p. 1112.

of personal experiences."[172] After an organizational meeting, the school administration refused to permit additional meetings until the conclusion of an investigation as to their legality. Upon advice from their attorney, the Williamsport School Board denied the students' request to hold further meetings on the basis that a conflict of church and state existed. A suit was brought against the district for refusing to permit the nondenominational prayer club to meet.

Decision

A ruling in favor of the plaintiffs by William Nealon, Jr., Chief Judge in the United States District Court for the Middle District of Pennsylvania, resulted in an appeal. The Third Circuit Court of Appeals, with Justice Garth presiding, ruled as follows:

> (1) student members of club had free speech right guaranteed by First Amendment; (2) school district created a limited forum; (3) school district's objection to presence of club within school based on potential violation of establishment clause was valid; (4) students' First Amendment rights were outweighed by establishment clause considerations.[173]

After the Court of Appeals reversed the lower court decision, the case was appealed to the United States Supreme Court. The High Court announced that it would not decide whether high school students have a constitutional right to

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[172]Bender v. Williamsport Area School District, 741 2d 538 (3rd Cir. 1984), p. 542.

[173]Ibid., p. 539.

hold prayer and Bible study meetings on the campus of public schools. In a five to four decision, the Supreme Court held that a technical error nullified the federal appellate court's ruling. The error, according to the Court, was allowing a single member of the Williamsport school board to challenge the district court ruling. According to the Court's majority, the Court of Appeals should not have allowed a sole dissenting voice on the board of education to have such pervasive influence.

Discussion

A student group, Petros, requested permission to gather each Tueday and Thursday morning during a thirty minute extracurricular period set aside for student meetings. The activity period was part of the compulsory school day, but participation in clubs was voluntary. Students choosing not to participate were allowed to visit the media center or computer laboratory, review career placement materials, or remain in their homerooms until the next class period began. No proposed student club had ever been denied permission to meet until the advent of Petros. All student activities and meetings were supervised by a faculty advisor.

The Court of Appeals ascertained that a limited open forum was created at the high school. The issue thus became one of determining if the school could constitutionally impose restrictions on the free speech rights of the students. The sole justification enunciated by Williamsport for denying

permission for Petros to organize was that such permission might be a violation of the establishment clause.

By using the tripartite test, Third Circuit Court of Appeals determined that Petros failed the test on two of the three salient points. First, permitting the group to meet would have the effect of advancing religion. Second, excessive government entanglement with religion would be unavoidable. The court concluded with the following:

> Instead of uniting students from varying backgrounds and beliefs, prayer in the public schools segregates students along religious lines. This works to the detriment of all students, and may particularly ostracize and stigmatize those students who are atheists or adhere to religious beliefs not shared by the majority of their fellow students.[174]

The Supreme Court ruling that the appeals panel erred was disappointing to those seeking clarity in the murky equal access waters. In this litigation, a case was presented that attempted to apply the Widmar[175] decision to secondary schools. Inconsistent opinions in the various judicial circuits plus the passage of the federal Equal Access Act have created a sea of uncertainty.

The rulings of the federal court system presented in this chapter indicate that a new breed of educational philosophers have emerged. Inconsistency on some issues at the

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[174] Ibid., p. 561.

[175] Widmar v. Vincent, 635 F. 2d 1310 (8th Cir. 1980), aff'd, 454 U.S. 263 (1981).

appellate court level has resulted in additional confusion and ambiguity. Increased attention has thus been focused on the United States Supreme Court. The stakes are high as evidenced by the political interplay of interest groups in recent attempts to appoint a new justice to the Supreme Court. After the current vacancy is filled, significant decisions will be rendered affecting the future of public education.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

Although the history of American public education is replete with success stories, recent years have witnessed a growing antagonism by an increasingly large segment of the populace, the New Right, to the alleged secular humanist influences of the nation's public schools. The conservative opposition has developed, in part, as a reaction against rapid social, technological, and cultural changes in modern America. A higher degree of pluralism has required increased tolerance by public institutions, but has led to intensified conflict among special interest groups. Heightened insecurity and frustration by conservatives, combined with a sense of powerlessness, have accentuated the rise of New Right organizations across the nation. The increased activism and militancy have been characterized by intensified political involvement and the utilization of more sophisticated techniques in exerting influence on the national, state, and local levels of government.

Schools, as public institutions, operate in the total society and experience pressures and influences from both liberal and conservative interest groups. The agenda of the New Right addresses not only educational matters, but

also abortion, pornography, sexual attitudes and behaviors, women's rights, and a plethora of other topics concerning the total society. The scope of this study has been limited to a review of abreact conservative influences on public schools.

Chapter II provided a review of the professional literature concerning the impact of the New Right on public school practices and materials. After a historical perspective on conservative influences was presented, the emergence of the current New Right leadership was detailed. This was followed by a discussion of the following major issues pertaining to conservative pressures on the public school curriculum: (1) secular humanism, (2) censorship of curricular materials and books, (3) the evolution-creationism controversy, and (4) religious practices such as prayer, meditation, and religious meetings in the public schools.

Chapter III presented a review of the legal aspects of conservative pressures on the public schools. This included an identification and discussion of relevant judicial decisions. In Chapter IV, attention was focused on salient federal court decisions of the past decade that have influenced the posture of public schools. A review of the facts of each case, ruling of the court, and discussion of the impact of the case was presented in each instance.

Questions and Answers

The following questions were identified in the opening chapter. Careful review of the professional literature and judicial analysis have been undertaken in order to arrive at the following repsonses.

1. Question: Is secular humanism a religion and is it being taught in the public schools?

Answer: Although reference was made in a footnote to secular humanism in one case, the United States Supreme Court has never ruled conclusively that secular humanism is a religion. Several district court decisions and a recent ruling by an appellate court have referred to secular humanism in such terms. Confusion reigns when scholars, court officials, educators, and other citizens attempt to define secular humanism and religion and endeavor to distinguish secular humanism from humanism and humanitarianism. Many leaders of the humanist organizations assert that their philosophical base is a scientific approach to life, rather than a religion. Other humanists do not agree with this assertion, and have sought legal recognition as a religious group.

Federal court cases involving secular humanism can be characterized as those that have arisen as part of the fundamentalist political agenda or those that are part of the courts' attempt to arrive at a definition of religion. The basic paradox remains as follows: How can secular humanism be Godless and still be classified as a religion? The concept

that religion can be non-theistic is an exercise in semantics that fails to clarify the basic issues involved in the widening chasm between the New Right and the public schools.

Even if one accepted the notion that secular humanism is a religion, no correlation can be drawn between that concept and the educational practices and activities occurring in the nation's classrooms. It is incredulous to assume that millions of public school employees have coalesced as part of a national conspiracy to destroy the traditional religious underpinnings of the country by advancing a new Godless form of religion known as secular humanism. Instead, secular humanism has become a catchphrase encompassing all of the New Right complaints against public education. The bogeyman of the 1980's is alive and well.

2. Question: To what extent do conservative groups attempt to censor public school curricular materials and books?

Answer: Parents, teachers, school board members, school administrators, and other citizens may all be influenced by the philosophy of conservative organizations and become potential censors of curricular materials and books. The art of censorship may involve suppression of use, actual removal of materials, or limiting student access to instructional materials or library books. A more subtle type of censorship, often termed precensorship, occurs during the selection process and is widespread across the

nation. Large organizations such as Educational Research Analysts, Incorporated have exerted significant influence on national textbook publishers and state education departments. Certainly many educators have hesitated to purchase materials for fear of New Right retaliation.

More than one-half of the nation's public schools have experienced censorship attempts in recent years. A significant number of the censorship incidents resulted in either the removal or suppression of library books and curricular material. The rapid escalation in censorial activity can largely be attributed to the organized and individual efforts of conservative political organizations associated with the New Right. In excess of two hundred national, state, and local organizations are actively involved in the debate over censorship. No geographic area of the nation is immune from conservative pressures to control curricular materials and books. All types of materials including library books, basal textbooks, and films may be the target for New Right censorial activities.

3. Question: How have conservative pressure groups affected the status of prayer, meditation and religious meetings in the public schools?

Answer: School sponsored, organized, vocal prayer in the public schools is unconstitutional, both during the instructional day and at extracurricular activities. Voluntary silent prayer on the part of an individual is a constitutionally protected right for all citizens. New Right

groups have focused attention on all three branches of government in an effort to enhance the position of prayer and meditation in the public schools. President Reagan has been convinced to encourage support for the conservative political agenda in this area. The United States Congress has blocked numerous attempts to enact a prayer amendment. Federal courts have been deluged with litigation.

New Right pressures on numerous state legislatures have resulted in the passage of a variety of statutes endorsing prayer, meditation, introspection, contemplation, or some combination of the practices. These activities have generally been intended to occur during a moment of silence set aside by the school specifically for that purpose. Under judicial scrutiny, the federal courts have often nullified the statutes as violative of the First Amendment. While the United States Supreme Court has held that a moment of silence initiated for a genuine secular purpose would pass constitutional muster, the plethora of recently enacted state laws concerning silent meditation have been enacted for the sectarian purpose of returning prayer to the classroom. Such endorsement by the state is unconstitutional.

In a 1981 Missouri case involving university students, the United States Supreme Court agreed to grant equal access to certain university facilities by a student religious group. New Right advocates have attempted to extend the equal access rights obtained by the college students to the

nation's secondary and, in some cases, elementary schools. The controversy involves issues such as the right of student religious groups to meet during the instructional day, the right of such groups to meet on school facilities before or after the official school day, the right of community groups to use school facilities for religious meetings, and the right of school employees to meet on school property for religious purposes.

Political conservative pressures in 1984 were sufficient to secure Congressional approval of the Equal Access Act. This piece of federal legislation is in conflict with judicial rulings of several federal courts. The result has been inconsistency and confusion in applying school board policies concerning religious meetings in the public schools. The United States Supreme Court recently rejected an opportunity to provide insight into the issue.

The impact of the New Right has been significant in the areas discussed; goals were identified, strategies were implemented, and success was achieved in some areas.

4. Question: What is the legal status of evolution, creationism, and balanced treatment statutes?

Answer: Evolution is a scientific theory that can be permissibly taught as such in the nation's public schools. Scientific creationism, based on the Genesis account of the origins of man, does not meet the criteria to qualify as a science and thus cannot be taught as part of a science course.

To engage in such a practice would constitute a violation of the establishment clause of the First Amendment. Creationism could, howver, be discussed in classes involving the social sciences, comparative religion, or literature as long as the purpose was to educate and not to advance specific religious beliefs.

Numerous states have enacted balanced treatment statutes that either require the teaching of both evolution and creationism as scientific theories, or specify that if evolution is taught, then equal time and emphasis must be given to the Genesis account of creation. When litigated, however, these statutes have failed to pass constitutional muster. The United States Supreme Court recently struck down a Louisiana balanced treatment statute because it had no secular purpose, served to establish religion, and created excessive government entanglement with religion.

5. Question: Does a review of recent court decisions indicate the emergence of specific trends?

Answer: The agenda of the New Right continues to be legislated and litigated with increasing frequency. References to secular humanism are becoming more commonplace in the text of the federal court decisions. The United States Supreme Court has failed to definitively address the concept of secular humanism and its purported influence on the nation's schools. Practices that communicate a state endorsement of religion have consistently been rejected

by the courts. Such practices include organized sanctioned vocal prayer, instruction in creationism as a science, and the enactment of state laws to restore prayer under the guise of meditation, and balanced treatment statutes.

Censorship of library books based on the personal beliefs of school officials is violative of the constitutionally protected rights of students according to the United States Supreme Court. The removal or suppression of classroom instructional materials is less clearly defined. As a result, the New Right views censorship of curricular materials and books as a major battlefront in the war against secular humanism.

Inconsistency reigns in the arena of the legality of conducting religious meetings in the schools. The conflicting goals and resolutions of the United States Congress, federal court decisions, and the refusal by the Supreme Court to rule on the issue has created uncertainty and confusion. The future portends increased political activity by the New Right and mounting pressure on the judicial system to deal more directly with controversial issues.

6. Question: Based on a review of the professional literature and judicial analysis, what tactics should the educational community employ when dealing with conservative pressure groups or individuals?

Answer: Educators must recognize the scope, depth, and reasons for conservative pressures on public school curriculum. The answer to this question, as revealed by a review

of the professional literature and judicial rulings, can be located in the "Recommendations" section of this study.

Conclusions

An analysis of federal court decisions does not always reveal a consistent and definitive solution for resolving litigious issues. The time, place, and particular set of circumstances involved account for the sometimes varied rulings of the courts. The following general conclusions, however, can be made concerning the legal aspects of conservative pressures on the nation's public schools.

1. Courts will not intervene in the daily operation and administration of the public schools unless the legality of a state statute is at issue or the constitutional rights of students are involved.

2. To determine the constitutionality of a practice, the courts will often ascertain if the action has a secular purpose, neither advances nor inhibits religion, and avoids excessive government entanglement with religion. An affirmative response to each of the three criteria means the practice is not a violation of First Amendment rights. A negative response on even one criteria, however, requires that the practice be discontinued.

3. First Amendment rights granted to citizens by the United States Constitution cannot be compromised by community sentiment or the personal beliefs of school board members or educators.

4. The constitutional rights of students, teachers, parents, and educators in school settings will continue to be the focus of litigation initiated by conservative groups and individuals.

5. The strategy of the New Right has been twofold: (1) attack public schools for allegedly secular humanist practices and insist on reform, and (2) withdraw from the public schools in favor of private education or home schooling. Evidence indicates that this trend will continue.

6. The New Right is a growing conservative, religious, political movement that endeavors to influence the policy and practices of public education with their own ideology.

7. No geographic area, grade level, or educator is immune from attack by the New Right.

8. Secular public schools and personal religious faith are not incompatible as portrayed by the New Right.

9. The right of school boards to determine curriculum and select appropriate materials has been consistently upheld by the courts.

10. The right of school boards and educators to remove materials will continue to undergo close judicial scrutiny. Library books may not be removed if the intent is to limit access to ideas that are opposed by members of the board of education or school personnel. Conflicting rulings in the various appellate courts have generated confusion

and uncertainty regarding the purging of classroom instructional material.

11. School officials are not required to exclude from the instructional program all materials that might offend the religious sensibilities of individuals or groups.

12. Decisions to include materials or programs in the school curriculum should be based on secular, rather than religious reasons.

13. Teaching evolution as a scientific theory in the public schools is constitutionally permissible.

14. Instructing students in creationism, or the Genesis account of creation, as scientific theory or fact is forbidden.

15. When litigated, balanced treatment statutes requiring equivalent instructional attention to evolution and creationism as scientific theories have not met constitutional muster.

16. School sponsored vocal prayer in public schools is unconstitutional.

17. Silent voluntary prayer by an individual is permissible.

18. Schools may sponsor the objective academic study of religion, but may not endorse or encourage the acceptance of any particular view.

19. Secular humanism is a catchphrase used by New Right critics of public education to denote all categories of complaints.

20. School districts have inconsistent policies regarding religious meetings in public school facilities. This is due to conflicting guidelines enunciated by the federal court system and United States Congress.

Recommendations

One stated purpose of this study was to delineate recommendations to assist public school board members, administrative personnel, and teachers in dealing effectively and tactfully with conservative New Right challenges and pressures. The following recommendations are offered based on a review of the professional literature and close scrutiny of recent judicial rulings in the federal court system.

1. School personnel should be educated about the goals, strategies, and scope of the New Right movement.

2. The school board, superintendent, and principals should have a written policy for approval, rejection, and removal of curricular materials. Both educators and the community should be made aware of the policy. The policy should contain specific procedures concerning the adoption of textbooks and the purchase of library books and other instructional materials. Removal of materials should also be addressed by the policy.

3. Each school district should have a written policy for handling challenges to the public school curriculum.

An appeals process should be established for those cases that cannot be resolved at the initial stage.

4. All school personnel should know what is being taught, what materials are being used, and why it is being presented.

5. Each school district and school should have a specific public relations program designed to emphasize the positive aspects of public education and maintain open channels of communication with the community.

6. The school district should have ready access to local media, community group leaders, and parent groups so that false information and misunderstandings can be corrected quickly.

7. If challenges are presented, deal with specific charges, not vague generalities. For example, if a book is allegedly espousing a secular humanist philosophy, have the complainant identify specific passages that are objectionable and indicate reasons why the material is offensive. Have the complainant define his perception of secular humanism.

8. Obtain in writing any charges made against school personnel or the instructional program.

9. Listen attentively and politely to complaints based on the sincerely held beliefs of members of the community. If the complaint is legitimate, remedial action should be taken by the school. School personnel should not, however, make changes in constitutionally justifiable practices simply because of community pressure.

10. School personnel should have ready access to all legal directives from the state, district, and school level. This would include, but is not limited to, guidelines from the state department of education, state legislative enactments related to educational policy, school board policies, administrative regulations of the school disrict and superintendent, and copies of school based regulations including a staff handbook.

11. If materials are to be removed from the instructional program, motives should be examined. Materials should not be removed in an effort to limit student access to appropriate materials or due to the personal, political, or religious beliefs of school personnel. A genuine secular educational motive should be present in all removal cases.

12. Each school district should have a clearly defined policiy concerning the use of school facilities.

13. Consider utilizing a closed agenda at school board meetings. Speakers would sign up in advance to address the board. Specific procedures, such as time limitations, could be established.

14. Distinguish between problems and solutions. It is possible for a community member and school personnel to agree about a specific problem, yet have differing views on the proper solution.

15. Ensure that scientific theory is taught as theory and not as absolute fact. Staff, students, and community

members should be educated on the goals and techniques of science.

16. Ensure that curricular materials do not deny or omit the role of religion in history. The First Amendment does not prohibit the mention of religion, only the inhibiting or advancement of religion.

17. Scientific creationism should not be taught as part of a science course. The Genesis account of creation can be discussed in literature, social science, or comparative religion courses.

18. Students should not be required to endorse ideas that are contrary to sincerely held religious beliefs.

TABLE 1

TABLE OF CASES

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May v. Cooperman, 572 F. Supp. 1561 (1983), 780 F. 2d 240 (3rd Cir. 1985).

May v. Evansville-Vanderburgh School Corp., 787 F. 2d 1105 (7th Cir. 1986).

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APPENDIX A

THE PEOPLE THE PREACHERS PLEASE

I. Who watches?

Trait	Percentage
White	81%
Nonwhite	19%
Male	44%
Female	56%
Under age 30	17%
Age 30-49	35%
50 or over	48%
Married	66%
Single	12%
Divorced/widowed	21%
Grade school	38%
High school	39%
Some college	13%
College graduate	10%
City dweller	29%
Suburbs	35%
Rural	36%
Southerner	37%
Midwesterner	29%
Easterner	18%
Westerner	16%

II. Who contributes money?

Income	Percentage of Contributors
Less than $15,000	23%
$15,000-$25,000	25%
$25,000-$35,000	22%
More than $35,000	30%

III. Religious characteristics:

	Viewers	Non-viewers
Protestant	72%	51%
Church members	77%	66%
Evangelical	37%	9%
Attend church weekly	48%	33%
Believe the Bible literally	58%	28%
"Born again" experience	55%	24%
Dissatisfied with changing morals	50%	31%

IV. Views on politics and social issues:

	Viewers	Non-viewers
Oppose a nuclear freeze	43%	33%
Favor the death penalty	71%	75%
Voted in '80 presidential election	77%	72%
Oppose legalized abortion	68%	39%
Extramarital sex is always wrong	90%	79%
Homosexuality is always wrong	90%	70%
Favor tougher anti-pornography laws	81%	76%
Women are happiest at home with kids	80%	63%
Wife shouldn't work if husband supports	56%	33%

Source: "Religion and Television," a research report by the Annenberg School of Communications of the University of Pennsylvania and the Gallup Organization Inc. Taken from the Greensboro News and Record, June 4, 1986.

APPENDIX B

FORTY TARGETS OF THE TEXTBOOK PROTESTERS

1. sex education
2. drug education
3. values clarification
4. the study of psychology and the use of psychological principles in teaching
5. sociology
6. anthropology
7. the humanities
8. ecology
9. world geography--if there's mention of one-worldism
10. world history--if there is mention of the United Nations
11. ethnic studies
12. literature written by homosexuals
13. black literature
14. novels that deal with conflicts between parents and their children
15. basal readers with many pictures and drawings
16. the so-called dirty words in dictionaries and all books
17. profanity
18. violence
19. books that do not champion the work ethic
20. books that do not promote patriotism
21. books that do not promote the family unit as the basis of American life
22. mythology
23. stories about pagan cultures and life styles

24. books and stories that "defame" historical figures by revealing their weaknesses

25. "trash"--The Catcher in the Rye, Go Ask Alice, Black Boy, Flowers for Algernon, etc.

26. works of "questionable" writers including Langston Hughes, Dick Gregory, Ogden Nash, Richard Wright, Joan Baez, and Malcolm X

27. phase-elective English programs

28. revisionist histories

29. materials that contain negative statements about parents

30. books that contain any print that is not horizontal and reads from left to right

31. role playing

32. sensitivity training

33. behavior modification

34. subjects that cannot be classified as basic

35. assignments that lead to self-awareness and self-understanding

36. situation ethics

37. assignments that help students make value judgments

38. human development programs

39. the occult

40. stories about the supernatural, magic, witchcraft, etc.

Source: Jenkinson, Edward B. "Forty Targets of the Textbook Protesters." (Paper presented at the Annual Meeting of the Ohio Council of the International Reading Association, 10 October 1980):7-9.

APPENDIX C

CHALLENGED MATERIALS

1985-1986

About David
A Chorus Line (play)
A Day No Pigs Would Die
Advocate (magazine)
A Journey Inside Me (filmstrip)
A Light in the Attic [2]
Alligator River (short story)
A Separate Peace
Biology (textbook)
Birth of a Nation (movie)
Black is Brown is Tan
Brave New World
California Suite (play)
Came a Spider
Catcher in the Rye
Changing Bodies, Changing Lives
Christine
Confessions of an Only Child
Courier (student newspaper)
Cujo [2]
Death of a Salesman
Deenie [2]
Drugs from A to Z: A Dictionary
El Norte
Endless Quest
Eye of the Needle
Fame (play)
Far from Shore
Finding My Way[2]
Flowers for Algernon
Football Dreams
Forever
Fridays
Get Oregonized (textbook)
Go Ask Alice
Grease (play)
Grendel
Hanging Out with Cici
Hoops
Huckleberry Finn
I am the Cheese [2]
I Know Why the Caged Bird Sings
Illustrated Encyclopedia of Family Health
Indoor Marijuana Horticulture
In the Night Kitchen

[ ] indicates the number of challenges during past school year

In This House Scott is My Brother
Introduction of Social Science (textbook)
It's Not What You Expect
Lady Chatterly's Lover (movie)
Last Whole Earth Catalog
Let's Talk About Family Living (textbook)
Life and Health (textbook)
Literature of the Supernatural (textbook)
Lysistrata
Macbeth (play)
Mademoiselle (magazine)
Marate-Sade (play)
Merriam-Webster College Dictionary [2]
Monsters
Monsters and Other Science Mysteries (filmstrip)
Ms. (magazine)
My Brother Sam is Dead
My Name is Davey--I'm an Alcoholic
Not for Profit (student newspaper)
Of Mice and Men
One Flew Over the Cuckoo's Nest
One Hundred Years (100) of Solitude
Ordinary People
Our Land, Our Times (textbook)
Our Oregon (textbook)
Redbook (magazine)
Romeo and Juliet (movie) [3]
Scroll (student newspaper)
Show Me (textbook)
Slaughterhouse-Five
Smart Enough to Know
Sociology (textbook)
The Bible
The Chocolate War[2]
The Clan of the Cave Bear
The Color Purple [3]
The Disappearance
The Great Gilly Hopkins
The Real Me
The Miller's Tale
The Shining
The World and Its People (textbook)
To Kill a Mockingbird
Too Much Too Soon
Topics for the Restless (textbook)
Understanding Psychology (textbook)

[ ] indicates the number of challenges during past school year

Vanities (play)
Virginia History and Government (textbook)
Vision Quest
Where the Sidewalk Ends
Winner All the Way
Winning
Witches (Erica Jong)
Witches (Colin Wilson)
Young Miss (magazine)

Source: Attacks on the Freedom to Learn: A 1985-1986 Report. Washington: People for the American Way, 1986, pp. 43-45.

APPENDIX D

TEXTBOOKS BANNED IN ALABAMA

I. Social Studies:

Publisher	Date Published	Titles and Grade Levels
Houghton Mifflin	1980	At Home, At School (1); In Our Community (2); Ourselves and Others (3); Our Home, the Earth (4); America, Past and Present (5); Around Our World (6)
Laidlaw	1981	Understanding People (1); Understanding Families (2); Understanding Communities (3); Understanding Regions of the Earth (4); Understanding Our Country (5); Understanding the World (6)
Rand McNally	1980	You and Me (1); Here We Are (2); Our Land (3); Where On Earth (4); Across America (5); World Views (6)
Scott Foresman	1979	Social Studies (1-6)
Steck	1981	Our Family (1); Our Neighborhoods (2); Our Communities (3); Our Country Today (4); Our Country's History (5); Our World Today (6)

II. History:

Publisher	Date Published	Titles and Grade Levels
Globe	1979	Exploring Our Nation's History (11)
Harcourt, Brace, Jovanovich	1977	Rise of the American Nation (11)
Holt Rinehart & Winston	1978	People and Our Country (11)
Houghton Mifflin	1981	These United States (11)
Laidlaw	1981	A History of Our American Republic (11)
Macmillan	1981	History of a Free People (11)

Merrill	1978	America Is (11)
Scott, Foresman	1980	The American Dream (11)
Silver Burdett	1979	Our American Heritage (9-12)

III. Home Economics:

Publisher	Date Published	Titles and Grade Levels
Bennett	1981	Today's Teen (8-12)
Ginn	1983	Caring, Deciding and Growing (9-12)
Goodheart-Wilcox	1979	Contemporary Living (8-12)
	1981	Homemaking: Skills for Everyday Living (9-12)
McGraw-Hill	1985	Teen Guide (8-12)

Source: Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Ala. 1987), 988-989.

APPENDIX E

EAGLE FORUM LETTER CONCERNING IMPLICATIONS OF THE HATCH AMENDMENT

To: School Board President

Dear _____

I am the parent of _____ who attends _____ School. Under U.S. legislation and court decisions, parents have the primary responsibility for their children's education, and pupils have certain rights which the schools may not deny. Parents have the right to assure that their children's beliefs and moral values are not undermined by the schools. Pupils have the right to have and to hold their values and moral standards without direct or indirect manipulation by the schools through curricula, textbooks, audio-visual materials, or supplementary assignments.

Accordingly, I hereby request that my child be involved in NO school activities or materials listed below unless I have first reviewed all the relevant materials and have given my written consent for their use:

- Psychological and psychiatric examinations, tests, or surveys that are designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings of an individual or group;
- Psychological and psychiatric treatment that is designed to affect behavioral, emotional, or attitudinal characteristics of an individual or group;
- Values clarification, use of moral dilemmas, discussion of religious or moral standards, role-playing or open-ended discussions of situations involving moral issues, and survival games including life/death decision exercises;
- Death education, including abortion, euthanasia, suicide, use of violence, and discussions of death and dying;
- Curricula pertaining to alcohol and drugs;
- Instruction in nuclear war, nuclear policy, and nuclear classroom games;
- Anti-nationalistic, one-world government or globalism curricula;
- Discussion and testing on inter-personal relationships; discussions of attitudes toward parents and parenting;
- Education in human sexuality, including premarital sex, extra-marital sex, contraception, abortion, homosexuality, group sex and marriages, prostitution, incest, masturbation, bestiality, divorce, population control, and roles of males and females; sex behavior and attitudes of student and family;
- Pornography and any materials containing profanity and/or sexual explicitness;
- Guided fantasy techniques, hypnotic techniques; imagery and suggestology;
- Organic evolution, including the idea that man has developed from previous or lower types of living things;
- Discussions of witchcraft and the occult, the supernatural, and Eastern mysticism;
- Political affiliations and beliefs of student and family; personal religious beliefs and practices;
- Mental and psychological problems and self-incriminating behavior potentially embarrassing to the student or family;
- Critical appraisals of other individuals with whom the child has family relationships;
- Legally recognized privileged and analagous relationships, such as those of lawyers, physicians, and ministers;
- Income, including the student's role in family activities and finances;
- Non-academic personality tests; questionnaires on personal and family life and attitudes;
- Autobiography assignments; log books, diaries, and personal journals;
- Contrived incidents for self-revelation; sensitivity training, group encounter sessions, talk-ins, magic circle techniques, self-evaluation and auto-criticism; strategies designed for self-disclosure (e.g., zig-zag);
- Sociograms; sociodrama; psychodrama; blindfold walks; isolation techniques.

The purpose of this letter is to preserve my child's rights under the Protection of Pupil Rights Amendment (the Hatch Amendment) to the General Education Provisions Act, and under its regulations as published in the Federal Register of Sept. 6, 1984, which became effective Nov. 12, 1984. These regulations provide a procedure for filing complaints first at the local level, and then with the U.S. Department of Education. If a voluntary remedy fails, federal funds can be withdrawn from those in violation of the law. I respectfully ask you to send me a substantive response to this letter attaching a copy of your policy statement on procedures for parental permission requirements, to notify all my child's teachers, and to keep a copy of this letter in my child's permanent file. Thank you for your cooperation.

Sincerely,

Copy to School Principal

Written by the Maryland Coalition of Concerned Parents on Privacy Rights in Public Schools and distributed by Phyllis Schlafly and Eagle Forum.

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