SOME LEGAL ASPECTS OF RELIGION IN PUBLIC EDUCATION

A Thesis

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by

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INTRODUCTION

Problem

In this study, the writer will consider the constitu-
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n. [illegible] outset, it is essential to undertand that the
lic schools are, by legislative enactments, detached for
purposes from every religious organization. This separa-
n has resulted, as this study will indicate, in a curriculum
t is generally divorced from sectarian or denominational
truction. However, many people have become concerned about
[illegible] of religious instruction in the public schools. To
[illegible] this secularization of public education, several
[illegible]s have been tried as an antidote to this secular curri-
[illegible]. This study will present the problems involved in putting
[illegible]gious education back into the curriculum, a problem that
[illegible] be viewed from the constitutions, statutes and court de-
[illegible]ons of the several states and the United States.

Delimitation

The purpose of this study is to deal only with the legal
[illegible]religious education in the public schools as it is

presented through, and in, the constitutions, statutes and court decisions. Only a brief and general historical background will precede each section, or chapter, to aid in acquiring a more complete understanding of the steps taken in these alternatives to a secular curriculum.

In addition to the cases and statutes involved with religious education in the public schools, the writer will also present three cases that show how religion has entered upon the educational scene: the Scopes Trial, Everson Case and the McCollum Religious Education Case.

No attempt will be made here to take sides in the issue of religious education in the public schools, but an attempt will be made to present the picture as it is seen through the law and the courts.

Justification

The writer believes that a study is necessary to present an otherwise not available picture of religion and its place in the curriculum. It is hoped that this material will be of benefit to administrators as they strive to set up a religious education program in their schools. For their assistance, they will find here the laws, practices and scope of religious education in the public schools of the United States.

Sources

Material for this study was found in the Johnson-Camden Library, Morehead State College, Morehead, Kentucky; the Joint University Library, Vanderbilt University, Nashville, Tennessee; the Law School Library, Vanderbilt University, Nashville, Tennessee; The Tennessee State Library, Nashville, Tennessee; and materials loaned through the Inter-Library Loan Service.

Plan

This study will present the problems of religious education as evidenced by the statutes, constitutions and court decisions. The first part will deal with the practice of Bible reading in the public schools; the second, with "released" and "dismissed" time plans for religious education; and the third will present three other instances in which religion has reached the courts.

Definition of Terms

For the purpose of this study, religious education will be understood to mean denominational or sectarian instruction as it is received by the pupils outside of the regularly prescribed secular curriculum.

"Released time" will be understood to mean time in which

the pupils of the public schools are dismissed from their regular classes to attend religious instruction outside of the public school buildings.

CHAPTER II

SECULARIZATION OF EDUCATION

The basic characteristics of early American education were carried over from its European background. Later, as the nation expanded, the form of American education assumed characteristically American patterns. But, in the beginning, emphasis upon religious values was an integral part of the American schools. The earliest schools were, for the most part, church supported. The system of church support was especially true of the New England Colonies and the Middle Colonies. Even the compulsory public schools were controlled and maintained by the clergy. In writing about the early qualifications of teachers, William Clayton Bower states;

> . . . . orthodoxy of religious belief was a primary qualification of teachers. The content consisted of the hornbook, from which the Lord's Prayer was learned, the catechism, the Bible and the New England Primer. In this Calvinistic theocracy church and state were united. In the Middle Colonies, however, the sectarianism of the settlers was so diverse that any common system of education was impossible. In Virginia and the other Southern Colonies the motivation for migration was chiefly, though not exclusively, economic. Nevertheless, the Southern Colonists brought with them their Anglican form of life. In this aristocratic society, whether education was by private tutor, in schools in England, or in the charitable plantation schools, religion was universally assumed.[1]

Too, the unification of church and state was assumed

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[1] William Clayton Bower, Moral and Spiritual Values in Education (Lexington: University of Kentucky Press, 1952), p. 5.

here just as it had been since the time of the Reformation in the Protestant countries of England, Scotland, Germany, Denmark, Sweden and Norway, and in the countries of Eastern Europe which had broken away from the Roman Catholic Church.

The total history in all Christian countries, both Catholic and Protestant, as known to Americans of the late eighteenth century was an unbroken record of established churches. So quite naturally the early Americans followed this practice in their administration of schools. In a sense a Constitutional provision which prevented Congress from creating a formal union in this country between one church and one government could be spoken of as a separation of church and state.

When, however, the nation as a whole prevented an establishment of one church and the individual states later rid themselves of established churches in the several states, a new political principle came into being.[2]

Following this, one of the greatest changes to take place in American education was its total secularization.[3] Between 1830 and 1870, most of the states banned the teaching of sectarian religion in the public schools. At the same time

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[2]James M. O'Neill, Religion and Education Under the Constitution (New York: Harper and Brothers, c. 1949), p. 23.

[3]Bower, op. cit., p. 5.

the states prohibited the use of public funds for denominational schools. These two laws were usually combined in a single new state constitutional provision or statute.[4]

The secular tide carried everything with it. In fact, it seems fair to say that ever since the acceptance of these laws by the American people the masses have received an elementary school education from which religion as such has been banned.

Such secularization had several facets. On the one hand, it removed religion from the education of the public school children whose parents are Christians and have the desire to see that their children receive religious instruction. On the other hand, it has caused denominational groups to organize and to maintain a large system of parochial schools.

For a full understanding of the impact of the separation of Church and State, it must be remembered that our nation was founded by men who believed in the principles of the Christian religion. The expression of this belief is found in the 48 constitutions of the 48 united states. Further, not a single constitution prohibits the teaching of religion in the public schools, but all of them do prohibit the teaching of sectarianism.[5]

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[4]O'Neill, op. cit., p. 27.

[5]Dr. Charles J. Mahoney, "Face the Issue," Vital Speeches, XVII No. 21 (August 15, 1951), p. 661.

Due to this legal prohibition and to the sanction of separation of Church and State in America, no public school may offer anything approaching religious instruction. A studied secularity is maintained from the beginning of educational experiences to the end. The general absence of religion in the curriculum of our public schools, where most of our future citizens receive the major portion of their required education, means that large groups of youth not reached by the churches have no regular religious or ethical training. Bower sees the result of secular education by writing:

> Our generation is confronted by the long-term results of the secularization of education. In retrospect, this solution of the problem under the conditions of the nineteenth century appears to have been the best, if not only, solution. Nevertheless, many of its consequences were neither foreseen nor intended. . . . The prohibition of the teaching of religion in the public schools led to the exclusion of religion itself, one of the most fundamental and universal forms of valuational experience.[6]

The past century has seen a momentous change from religiously controlled to politically controlled teaching for the mass of American youth. As Dr. Alexander Meiklejohn, though long a fighting liberal on the education scene has written:

> We have torn our teaching loose from its roots. We have broken its connection with the religious

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[6]Bower, op. cit., p. 7.

> beliefs out of which it has grown. The typical Protestant has continued to accept the Bible, as in some sense, the guide to his own living, but, in effect, he has wished to exclude the Bible from the teaching of his children. The teacher in the modern schools is commissioned to teach many things. But he is not commissioned -- he is rather forbidden -- to teach that 'faith' upon which the community, for which he teaches has built its own character and intelligence.[7]

In general, Americans are concerned that sectarianism in every form shall not be dominated by secularism or irreligion, which would be out of keeping with the best American tradition.

In present day legislation, the trend of enactments is definitely against any required religious instruction in the public schools. Except for a few cases where high schools or higher grades provide optional courses in Bible study for credit there is relatively little that may be properly called an authorized study of religion in the American public schools. Even in such courses the states do not provide regular textbooks on religion, the nearest approach being the occasional printing at public cost of syllabi which may be used as outlines for optional study.

In 1927, Jackson and Malmberg reported that in the states shown in Table I, high school credit was allowed for Bible study. In each of these states marked with an asterisk, an

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[7]Dr. Alexander Meiklejohn, Education Between Two Worlds (New York: Harper and Brothers, 1942), p. 4.

official syllabus was as a general rule issued by the State Department of Education.

TABLE I[8]

STATES THAT OFFER CREDIT FOR BIBLE STUDY

Alabama	New York
Arkansas	North Carolina
*Colorado	*North Dakota
Idaho	Oklahoma
*Iowa	*Oregon
Kansas	*South Dakota
*Maine	Tennessee
Maryland	*Texas
*Michigan	*Utah
Missouri	*Virginia
*Montana	West Virginia
Nebraska	

*These states furnish a syllabus for instruction.

In addition to the regularly prescribed courses in Bible study, the Bible also enters the public school through the practice of reading from the Bible in the morning exercises of the public school classrooms. In some areas, as will be shown by the number of cases presented in the parts following this chapter, this practice has been a major bone of contention.

In the following pages of this study, the writer will present laws regulating Bible reading as found in the several constitutions, state statutes and codes providing for this practice. In addition there will also be presented several

[8] J.C. Jackson and C.F. Malmberg, Religious Education and the State (New York: Doubleday, Doran & Company, 1928), p. 155.

state supreme court cases that have a direct bearing on the questions involved in Bible reading in the public school classrooms.

CHAPTER III

LAWS AND STATE SUPREME COURT DECISIONS RELATED TO BIBLE READING IN THE PUBLIC SCHOOLS

The laws of all the states forbid the teaching of denominational instruction in the public schools though many of them permit, and some require by statute, the reading of the Bible without comment in the opening exercises of the public school classrooms.

Prior to the late 'thirties of the last century, there was no serious objection by large groups to the then common practice of reading the King James version of the Bible at the opening exercises.

The first strong objection to this practice arose in certain Eastern cities that in the second quarter of the nineteenth century acquired a large Roman Catholic population through immigration. The controversy was particularly acute in the middle of the century when Roman Catholics were using this practice as an effective argument in favor of developing their own parochial school system.[1]

Following the middle of the nineteenth century, the Supreme courts of the American Commonwealths were called

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[1]Anson Phelps Stokes, Church and State in the United States (New York: Harper and Brothers, c. 1950), II, pp. 549-550.

upon to render decisions directly related to Bible reading or religious instruction in the public schools. According to Keesecker, from 1850 to 1900 six supreme court decisions were rendered that had bearing on the subject of Bible reading in the public schools.[2] Since 1900 these decisions have increased in frequency.

It is noticeable that no state specifically prohibits public school Bible reading by statutory law. Yet all states do prohibit "sectarian" instruction. These two facts seem to imply that lawmakers in general do not consider Bible reading as practiced in the public schools to be classified as sectarian instruction, nor do most of them consider the Bible a sectarian book.

In addition to the reading of the Bible, many of the statutes require the repeating of the Lord's Prayer. This custom has been criticized by Roman Catholics on the ground that the prayer as translated in the King James version is generally used rather than that of a recognized Roman Catholic version.[3]

Most of the states now adopt one of two policies by the acts of their legislatures, namely, either to forbid the use of any "sectarian" book of instruction, or to leave it

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[2]Ward W. Keesecker, Legal Status of Bible Reading and Religious Instruction in the Public Schools (Washington: U.S. Government Printing Office, 1930), p. 3.

[3]Roman Catholic omit the last sentence of the Protestant version of the Lord's Prayer.

to the courts to decide whether a book of instruction is sectarian.

Courts in different parts of the country where the same issue has been raised differ on the matter, the major question generally being whether the use of the King James version of the Bible is constitutional on the basis of its being termed a denominational or sectarian book.[4]

This question is closely related to that of the reading of the Bible in the public school classroom. Because of controversy several of the states have included specific instructions concerning the practice of Bible reading. These laws will be included here to show their variance from state to state.

ALABAMA

> All schools in this state that are supported in whole or in part by public funds shall have once every school day readings from the Holy Bible.[5]

DELAWARE

> No religious service, or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of the public schools.
>
> In each public school classroom of this State, and in the presence of the scholars therein assembled

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[4]This question was settled in Kentucky in 1905.

[5]1950 School Laws of Alabama, Act No. 495 (Montgomery: State Department of Education, 1950), p. 391.

at least five verses [Italics mine] from the Holy Bible shall be read at the opening of such school.[6]

FLORIDA

BIBLE READING -- Have once every school day, readings from the Holy Bible without sectarian comment.[7]

GEORGIA

Providing, However, that the Bible, including the Old and the New Testaments [Italics mine] shall be read in all the schools of this State receiving State Funds, and that not less than one chapter [Italics mine] shall be read at some appropriate time during each school day.[8]

KENTUCKY

Bible to be read. -- The teacher in charge shall read or cause to be read a portion of the Bible daily in every class room or session room of the common schools of the State in the presence of the pupils assembled. . . .[9]

MAINE

. . . . There shall be, in all the public schools of the State, daily, or at suitable intervals, readings from the Scriptures with special emphasis on the Ten Commandments, the Psalms of David, the Proverbs of Solomon, the Lord's Prayer and Beatitudes. It is further provided that there shall be no denominational or sectarian comment or teaching.[10]

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[6] 1923 Laws of Delaware, cited by Keesecker, op. cit., p. 6.

[7] Florida Schools Laws, Section 231.00.1 (Tallahassee: State Department of Education, 1946), p. 115.

[8] Georgia School Laws, Section 32-705 (n.p. State Department of Education, 1948), p. 28.

[9] Kentucky Common School Laws -- 1950, Sec. 158.170 [4363-7] (Louisville: Dunne Press, 1950), p. 310.

[10] Maine School Laws -- 1933, Ch. 166 (Augusta: Department of Education, 1933), p. 399.

MASSACHUSETTS

A Portion of the Bible shall be read daily in the public school without written note or oral comment . . . .[11]

NEW JERSEY

At least five verses [Italics mine] taken from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment in each public school classroom, in the presence of the pupils therein assembled. . . .

No religious exercise except the reading of the Bible and the repeating of the Lord's Prayer shall be held in any school receiving any portion of the moneys appropriated from the state to the public schools.[12]

PENNSYLVANIA

That at least 10 verses [Italics mine] from the Holy Bible shall be read or caused to be read, without comment at the opening of each school day, by the teacher in charge. . . .[13]

TENNESSEE

At least ten verses [Italics mine] from the Holy Bible shall be read or caused to be read, without comment at the opening of each and every public school, upon each and every school day, by the teacher in charge: Provided that the teacher does not read the same chapter more than twice during the same session . . . . [Italics mine][14]

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[11] General Laws Relating to Education, cited by Keesecker, op. cit., p. 8.

[12] Wendell Houston, compiler, School Laws of the Forty-eight States, School Laws of N.J. (Seattle: Houston Co., 1947), p. 9.

[13] 1913 School Laws of Pennsylvania, cited by Keesecker, op. cit., p. 9.

[14] 1951 Public School Laws of Tennessee, Public Chapt. No. 102 (Nashville: State Department of Education, 1951), p.

Of the twelve states that require Bible reading, only one of them requires a particular version of the Protestant Bible.[15] That is the State of Idaho whose statute reads:

> That selections from the standard American version of the Bible, to be selected from a list of passages furnished from time to time by the State board of education, shall be read. . . .[16]

In addition to these laws permitting Bible reading, Indiana, Iowa, Kansas, Mississippi, North Dakota and Oklahoma have statutes permitting the reading of the Bible in the classroom. These laws, as they have been cited by Keesecker and Houston, do not show much variance except the statute for the State of North Dakota. Their statute reads:

> The Bible shall not be deemed a sectarian book. It shall not be excluded from any public school. It may, at the option of the teacher, be read in the school without sectarian comment, not to exceed 10 minutes daily. . . .[17]

The practice of the District of Columbia, being Federal territory and under the jurisdiction of the Congress of the United States is specially important. It has no constitution but its board of education has the authority from Congress to draft rules for the public schools. The following requirement is now in force:

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[15] As a general rule, most areas read the version of the Bible that is acceptable to the denominational majority of the pupils.

[16] School Laws of Idaho, cited by Keesecker, op. cit., p. 10.

> Each teacher shall, as a part of the opening exercises, read, without note or comment, a portion of the Bible, repeat the Lord's Prayer, and conduct appropriate singing by the pupils.[17]

On the following pages of this chapter, a few of the more important decisions on the Bible-reading question will be cited. As to classification, these cases will be presented in their chronological order.

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[17]Letter from the Washington, D.C. Superintendent of Schools, dated April 4, 1952.

MAINE

[Donohoe v. Richards, 61 Am. Dec. 256 (1854)]

FACTS:

The school committee had regularly prescribed the Protestant version of the English Bible to be used as a reading book in the public schools of Maine. All the children therein were required to read this said version. The plaintiff, a pupil, from religious scruples refused to read in this book. Therefore, the pupil was expelled, whereupon suit was brought to recover damages for malicious and unjustifiable expulsion.

ISSUES:

1. Are public school committees liable for damage at the suit of an individual pupil who has been expelled?
2. Do public school committees have the authority to select books to be used in the public schools?
3. May they expel the public school pupil who refuses conscientiously to read a book prescribed by them?
4. May the public school committees adopt the English version of the Bible while knowing that such reading was an interference with the religious belief of some of the pupils?

DECISIONS:

1. No.
2. Yes.
3. Yes.
4. Yes.

REASONS:

3. The reason given was that if the plaintiff declined to obey one of the requirements of the school, rightfully made, then another could follow and that the discipline of the school would, then, be injured.

4. In answering this question, the courts said that "the Bible was used merely as a book in which instruction in reading was given . . . a law is not unconstitutional simply because it may prohibit what a citizen may think to be right or wrong. . . ."

IOWA

[Moore v. Monroe, 64 Iowa 367 (1884)][18]

FACTS:

Teachers were accustomed to occupy a few minutes each morning in reading selections from the Holy Bible, repeating the Lord's Prayer, and singing hymns. The plaintiff had two children in the school but they were not required to be present during the time thus spent. However, the plaintiff objected to these morning exercises and requested that they be discontinued.

This was an action to compel the schools to cease religious activity in the morning exercises of the schools.

ISSUES:

1. Do the exercises make the school a place of worship and, thus, violate the constitution?

DECISION:

1. No.

REASONS:

1. The legislature has provided that the Bible is not to be excluded from the schools.
2. As long as the plaintiffs' children are not re-

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[18]Cited by Keesecker, op. cit., p. 14.

quired to attend these exercises, ". . . we cannot regard the objection as one of great weight."

MICHIGAN

[Pfeiffer v. Board of Education City of Detroit, 118 Mich. 560 (1898)][19]

FACTS:

The teacher in a Detroit school read from a book known as Readings from the Bible. The respondent states that the book is comprised, mainly, of extracts from the Bible and that it emphasizes the moral precepts of the Ten Commandments, and stories which are intended merely to inculcate good morals. The teacher was not required to give instruction from this book and no comment was made.

ISSUES:

1. Is the reading of extracts from this book unconstitutional?

DECISION:

1. No.

REASON:

I do not think that it should be held . . . . Since the admission of this State into the Union, a period of more than half a century, the practice has obtained in all the State institutions of learning . . . . The reading . . . . in the matter indicated. . . . is not in violation of any consitutional provision.

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[19]Cited by Keesecker, op. cit., p. 15.

KENTUCKY

/ Beckett v. Brooksville Graded School District,

120 Ky. 308 (1905) /

FACTS:

Passages of the King James Bible and prayer were read and recited in public school by teachers at the opening of school each morning. The prayer offered was as follows:

> Our Father, who art in Heaven, we ask Thy aid in our day's work. Be with us ina all we do and say. Give us wisdom and strength and patience to teach these children as they should be taught. May teacher and pupil have mutual love and respect. Watch over these children both in schoolroom and on the playground. Keep them from being hurt in any way, and at last, when we come to die, may none of our number be missing from around Thy throne. These things we ask for Christ's sake. Amen.

ISSUES:

1. Does the offering of prayer make that school a "sectarian" school?

2. -Is the King James Bible a sectarian book?

3. Does the mere reading of the Bible constitute sectarian instruction?

DECISIONS:

1. No.

2. No.

3. No.

REASONS:

1. As neither the form nor the substance of the prayer complained of seems to represent any peculiar view or dogma of any sect or denomination, or to detract from those of any other, it is not sectarian . . . .

2. The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. . . . The law does not forbid the use of the Bible in the public schools. . . .

3. We believe the reason and weight of the authorities support the view that the Bible is not of itself a sectarian book, and when used merely for reading in the common schools, without note or oral comment by teachers, is not sectarian instruction; nor does the use of the Bible make the schoolhouse a house of worship.

TEXAS

[Church et. al. v. Bullock et. al., 109 S.W. 115 (1908)]

FACTS:

The school trustees passed a resolution which sanctioned the reading of the Bible and the repeating of the Lord's Prayer in the school room. Most of the teachers followed this practice and they invited the pupils to join. No pupil was required to attend these readings and prayers. Nevertheless, several parents brought suit to stop this practice.

ISSUES:

1. Did these exercises convert the school into a religious seminary?
2. Did these exercises make the school "sectarian" within the meaning of the constitution?
3. Did these exercises make the school room a place of worship?

DECISIONS:

1. No.
2. No.
3. No.

REASONS:

1. Any state school, organized under the statutes as a public school is not a denominational school.
2. To say that the constitution prohibits the reading of the Bible in the public school room is ". . . . To state a condition bordering on moral anarchy."
3. "Not at all."

GEORGIA

[Wilkerson v. City of Rome, 110 S.E. 895 (1922)]

FACTS:

The commissioners of the city of Rome, Georgia, by an ordinance, directed the board of education to pass a ruling that prayer and readings from the King James version of the Bible be held daily. Also they directed that provisions be made to excuse pupils from these exercises upon written notification from their parents.

The action was to compel the board of education to carry into effect the ruling of the commissioners.

ISSUES:

1. Is the ordinance an interference with the constitutional liberty of religious belief?
2. Would this practice result in using public funds for any church, sect or denomination?

DECISIONS:

1. No.
2. No.

REASONS:

1. Reading from the Bible is not an interference with constitutional liberty or religious belief.

2. Bible reading in the school does not make that school a sectarian institution in any sense of the word.

SUMMARY

By way of a summary to this chapter, it may be said that most state supreme court decisions uphold the reading of the Bible as permitted in the absence of a statute to the contrary.

The Supreme Court of the United States has never reviewed the issue of Bible reading in the public school classrooms.

Dr. O.T. Hamilton, in his thesis on the subject of the courts and the curriculum, has made a study of the cases outlined in this study and many others. From his study, he deduced the following four facts on which alone the courts seem to agree:

> (1) That sectarian instruction in the public schools is prohibited, (2) that the public schools should not be subjected to sectarian influence, (3) that the public funds should not be appropriated or used in aid of sectarian purposes, (4) that no one should be compelled to attend or to support any worship against his will. However, when it comes to determining when the practices complained of constitute a violation of these propositions, there seems to be no general agreement.[21]

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[21] Dr. O.T. Hamilton, The Courts and the Curriculum (New York: University of Columbia Press, 1927), Ch. I.

". . . But religion, morality, and knowledge being essentially necessary to the good government and the happiness of mankind, schools and means of instruction shall forever be encouraged. . . not inconsistent with the rights of conscience. . . ."

Ohio State Constitution (1802)
Article VII, Section 3.

CHAPTER IV

THE HISTORY AND EXTENT OF THE MOVEMENT -- RELEASED AND DISMISSED TIME

Cooperative weekday church schools were first organized in this country by William A. Wirt in Gary, Indiana, in 1914.

Although the schools at Gary were on the so-called released time plan, that is pupils were released during school hours to attend religious instruction, there soon developed a significant variant of the plan known as dismissed time, which meant that students were generally let out or dismissed a half hour or an hour earlier one day a week so that those who wished might attend religious courses, usually held outside the school building. This has seemed to many to be less open to constitutional and other objections.

At times, the two systems were not clearly differentiated, as in New York State, where the Education Law of 1940 merely states that, "Absence for religious observance shall be under the rules that the Commissioner shall establish."[1] This clearly permitted a released time plan, but in adopting

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[1]Stokes, op. cit., p. 525. Citing a statement from the New York Education Law of 1940.

the procedure, the state commissioner of education, on July 4, 1940, provided that "Such absence shall be for not more than one hour each week at the close of a session in times to be fixed by local school authorities."[2] In other words, an experiment in released time became a dismissed-time project. This fact was brought out clearly by both Mr. Justice Frankfurter in his concurring opinion and by Mr. Justice Reed in his dissenting opinion in McCollum v. Board of Education (1948).[3]

Released-time classes were officially organized in about three hundred towns during the twenty years following the Gary experiment.[4] Groups of churches and ministerial associations secured the cooperation of school boards of education and superintendents of schools in permitting classes in religious education during the regular school hours. Classes were started as a result of the realization of educational leaders that a need was present to give to the students a well organized education that would include religious training.

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[2]Ibid., p. 525.

[3]333 U.S. 203. (See Chapter VII of this study.)

[4]Mary Dabney Davis, Week-Day Religious Instruction (Washington: U.S. Government Printing Office, 1933), p. 13. Also see Keesecker, op. cit., p. 16.

The "Inter Church World Survey," in 1920, showed only 63.3 per cent of the children in this country were receiving any systematic religious instruction.[5] The following statement, preceding a resolution of the Board of Education in Rochester, New York in that same year authorizing the starting of religious education classes is significant:

> The importance of religious education, both to the individual and to the country, is generally recognized. By common consent, however, the free public schools of this country cannot teach religion. The responsibility must rest upon the home and the church, but the public school can and should cooperate to the limit of its power with the home and the church, to the end that the greatest possible number of our boys and girls may receive effective religious instruction.[6]

After the Rochester plan for religious instruction had been in force for some years, a committee was appointed to survey the results and to make recommendations. A summary of their recommendations follows:

> Excuses to attend religious instruction should not be granted below the third grade; among the reasons mentioned for eliminating the first and second-grade pupils were the problems of control of traffic and the loss of school time in the case of many first-grade pupils who were attending half-day sessions.
>
> All religious instruction classes were to be organized so that pupils from a single grade shall be excused at the same time and avoid disturbing the same groups more than once a week.
>
> Assure careful checking of attendance at the religious instruction centers and place the

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[5]Cited by Davis, op. cit., p. 12.

[6]Ibid., p. 13.

responsibility for absences after the pupils have left the public school upon the church school, which, in turn, will report to the parents.

Responsibility to parents for the conduct of pupils either on the way to the classes or during the classes rests upon the religious instruction centers. If a pupil's conduct is such as to reflect upon his school, permission to be excused should be canceled.

A uniform practice should be adopted as to the time allowed for religious instruction. Forty-five minutes should be recommended, this to include the time necessary for preparation to leave the school. This involves the presence of 'centers' which are near enough to require no more than 15 minutes of the pupils' time for transfer from the school. In the semidepartmental school the period would coincide with the regular class period.

It is considered unnecessary to have 'consent' cards signed anew each year.

It is recommended that the board of education set a definite limit to the number of pupils to be placed in charge of one teacher: 100 or more is too large a number for adequate control and efficient instruction. Pupils should not be taken from the schools until adequate control and instruction are provided for them in the religious centers.

The committee recommends that the religious instruction authorities be requested to make regular reports to the board of education.[7]

Similar plans for dismissing school pupils to attend classes for religious instruction were developing in Dayton, Ohio where the board made five protective stipulations. These, in summary, were as follows:

1. That there should be strong union of churches supporting the project and so organized that the superintendent of schools and board of education could deal with it rather than with the individual churches.

2. That trained teachers must be engaged for the

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[7]Cited by Ibid., p. 14.

religious instruction classes, so that the quality of the instruction pupils received would be similar to that of the public schools.

3. A week-day report should be made to building principals of individual pupil's attendance and a schedule submitted to show the daily time and place of meeting of religious education classes, the teacher in charge and the grade taught. This ruling was to insure that pupils dismissed from school use the time as expected.

4. Classes must be graded.

5. Classes must be located in centers as near the schools as possible to assure a minimum amount of time for arriving from and going to the public schools.[8]

This general plan, of which there have been many variations,[9] has the advantage of being equally fair to all the denominations and when these classes are held outside of the public school buildings, there is little danger of running counter to the American tradition that public education should include no required religious instruction.

To provide factual information for those inquiring as to how these classes are organized and administered the United States Office of Education, in 1933, conducted a survey and published their findings in pamphlet form.[10]

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[8]Paul C. Stetson, "The Administration of Week-day Schools of Religious Education," Elementary School Journal, XXIV, No. 8. (April, 1924), p. 46.

[9]See Keesecker, op. cit., pp. 20-21.

[10]Davis, op. cit., pp. 1-34.

The survey was concerned with the organization of religious instruction classes conducted during the regular school hours. Replies were received from 2,043 superintendents of public schools in cities and towns having populations of 2,500 and more. From superintendents in cities of 10,000 population and more facts were requested relative to all the topics discussed in the survey.

Reports for this survey came from 2,043 towns and cities show that pupils were released from the public schools in 213 cities and towns of 38 States.[11] These 35 states in which cities co-operating in this work are located represented all sections of the country. Davis' tabulation ranks them as, ". . . 6 in the East, 12 in the South, 11 in the Middle West, and 6 in the West."[12]

The following distribution, included in the 1933 survey, showed the representation of all population sizes discussed in that survey report -- the number then conducting classes, the number that had had such classes, but had discontinued them, and the number that had never co-operated in a program for religious instruction.[13]

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[11]These figures were for the year 1932-33.

[12]Davis, op. cit., p. 4.

[13]Ibid., p. 5.

TABLE II[14]

Week-day Religious Instruction for Public School Pupils

Population size of Cities	Pupils released		Discontinued		Never released	
	No.	percent	No.	percent	No.	percent
100,000 and more	11	15.7	2	2.9	57	81.4
30,000 to 99,999	24	11.8	11	6.3	139	79.9
10,000 to 29,999	56	11.6	27	5.6	388	82.8
5,000 to 9,999	52	8.5	48	7.8	512	83.7
2,500 to 4,999	75	10.6	61	8.7	570	80.7
TOTAL	218	10.7	149	7.3	1,876	82.0

As previously stated, this distribution only included cities conducting classes in religious education during school hours and it did not cover the number of cities in which classes were conducted after school hours. Davis stresses one point by saying, ". . . it should be stated that the large number of cities reporting no week-day religious instruction should not be interpreted as expressing disapproval of programs providing for religious instruction."[15]

In the 'thirties, three general types of administration for week-day church schools seemed to prevail. In the first

[14] Ibid.

[15] Ibid., p. 8.

each church assumed responsibility for its parishioners and determined its own policies and programs independent of any other church organization. The second type provided for an advisory council through which problems of individual churches could be cleared. In the third type, a council composed of representatives assumed responsibility for the organization and control of the religious education programs.

The following table shows the types of administration used for elementary schools and high schools in 88 cities from which replies were received in the 1933 survey:

TABLE III[17]

Types of Administration for Classes of Religious Instruction in 88 Cities, 9 Cities Having Both Elementary and High-School Classes

	No. cities reporting		Total
	Elem.	High School	
TYPES OF ADMINISTRATION			
(A) Individual Churches	16	5	19
(B) Advisory	13	10	13
(C) Council	39	-	42
(A) and (B)	11	-	11
(B) and (C)	1	-	1
(A),(B), and (C)	2	-	2
TOTAL	82	15	88

[17]Ibid., p. 9.

The 1933 survey also shows that it was from the elementary grades rather than the high schools that the pupils in the greater number of cities were released from school to attend classes in religious instruction. Of the 195 cities reporting on this item elementary grades were reported to have been released in 171 and high-school pupils in but 49 -- three and a half times as many cities released elementary grade pupils. In 25 cities, both elementary and high-school pupils were released.[18]

The following tabulation shows the grade groups from which pupils were released in cities of different population size:

TABLE IV[19]

Grade Groups from which Pupils are released for Religious Ins truction in 195 Cities

op. size of cities	Total	Elem.	High-School
00,000 and more	11	10	1
30,000 to 99,999	23	17	6
10,000 to 29,999	51	42	9
2,500 to 9,999	110	77	33
TOTAL	195	146	49

In 1933, the classes for religious instruction were ost often held in church buildings to which the children

[18] Ibid., p. 14. [19] Ibid., p. 15.

went from the public schools. Also, as to the time allowed for the classes in religious instruction, Davis reported that, ". . . in the majority of cities the religious instruction program parallels the public-school year."[20]

In 1941, it was reported that approximately five hundred communities in all parts of the country released children during school time for religious instruction.[21] This may be considered a fairly accurate statement for its date, in view of the reports received from the chief state school officers of forty-six states, the District of Columbia, Alaska and from some of our outlying possessions.[22]

In 1943, the influential International Council of Religious Education reported that the general plan of releasing children for weekday religious instruction, which it endorses, had been legalized in some way in forty-one states.[23]

In the early summer of 1949, the N.E.A. published The Status of Religious Education in the Public Schools. This showed that only four states -- Maryland, Nevada, New Hampshire and Wyoming -- and the District of Columbia and Alaska reported no religious education programs related to the public

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[20] Ibid., p. 14.

[21] Stokes, op. cit., p. 529.

[22] Donald G. Lothrop, "Boston Leads in Weekday Religious Education," Christian Century, v. LXIV no. 52 (Dec. 21, 1947), p. 1591.

[23] News Item, Christian Century, cited by Stokes, op. cit., p. 529.

schools or their pupils.[24] Of the 2,639 school systems reporting -- urban, town, village and county units -- 708 or 26.8 per cent showed that they were cooperating to some degree in, or providing formal religious instruction; only 15.3 per cent had classes in public school buildings during public school hours. The largest group, 68.1 per cent, reported individual pupils released to attend classes away from school -- the public school keeping a record in one-half of the cases. Approximately 14 per cent of all pupils coverd by the survey were enrolled in some form of religious education classes.[25]

This 1949 publication dealt with the type of religious education programs existing in the various school systems, the number and grade levels of the pupils, the discontinued programs and the point of view of the teachers and the community as to the desirability of religious education in the public schools.[26]

Brief descriptions of numerous types of religious eduacation programs were given in the letter transmitting the questionnaire as follows:

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[24] NEA Research Division, The Status of Religious Education in the Public Schools (Washington: N.E.A., 1949), p. 7.

[25] Ibid., pp. 6-12.

[26] Ibid., pp. 12-13.

Type A -- Formal classes in religious education taught in the public school buildings during regular school hours and involving official cooperative relationships between the school system and lay groups.

Type B -- Formal classes in religion taught in public school buildings after regular school hours, but with only incidental activity by the school system, such as keeping records of pupils' attendance and progress.

Type C -- Same as B, except school system has no official responsibility for the attendance records, etc.

Type D -- Individual pupils are excused at any time during school hours to attend religious instruction classes held outside of school buildings. Pupil attendance is reported to public school.

Type E -- Same as D, except for the fact that the public school has no official responsibility for attendance records, etc.

Type F -- At a given time each week school is dismissed and all pupils released to attend religious education classes or otherwise to use their time as parents think best. Public schools have no official responsibility for attendance records, etc. . . .[27]

In reference to these types of programs the report goes on to state:

For those who thought that their procedure did not fall into any of the types defined, space was provided for brief descriptions (referred to as Type G). However, careful editing of these replies showed that most of the descriptions varied only in minor ways from the defined types.[28]

The report states that replies were received from 2639 school systems. Of this number, 1621 reported that they had never had a religious education program of any kind, 310 reported that they had had programs consisting of one or more

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[27] Ibid., p. 8.

[28] Ibid., p. 8.

types of procedure but had given them up entirely, and 708 reported that they had some type of program then in operation. Thus, in 1948-49, 73.2 per cent of the school systems reporting had no program of religious education and 26.8 per cent reported some kind of program.[29]

Evidently, it has been difficult to estimate the number of pupils enrolled in religious education classes. The N.E.A publication states:

> School systems apparently have some difficulty in reporting the number of children actually attending classes in religious education. Some suggestion of incomplete enrollment figures was shown in the earlier studies reported. . . . Similar difficulties were encountered in this 1948-49 study, and therefore, little comparison can be made.[30]

It is hard to state how effective the weekday religious instruction classes have been. Too, it must not be thought that the movement for released time has been universally favored in American cities. The Baltimore Board of Superintendents, for example, in 1947, after considering a very thorough report on the subject opposed adoption of the plan. Quotations from the school superintendents' action follow:

> Because of deep and continuous concern professionally and personally in the problem of character development among children and youth, we have given much consideration to the various aspects of Character Education. We have examined and evaluated programs carried on in the past, both in Baltimore and elsewhere, programs now in operation and plans which offer promise for further development in this very important phase of education.

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[29] Ibid., p. 8.

[30] Ibid., p. 15.

> The members of the board are unanimously of the opinion that every child, if his life is to be well based, must come under the effective influence of the church and the home and that it is neither necessary or desirable that the child's contact with his church should occur during the time that he is required by law to spend in attendance at the public school.[31]

The report continues by stating:

> We are opposed to a program of Released Time for Religious Education because such a program might have the effect of violating the principle of separation of Church and State which is so fundamental a concept in American democracy. Moreover, we have found no indication either in the plans presented to us for the local program or in released time programs elsewhere which have been studied through observation and published reports that the purposes of education for character and citizenship would be furthered more effectively by work carried on outside of the schools than by the type of educational activity now being carried on in the schools. . . .[32]

Similarly in San Diego, California, the Board of Education after a year's trial in ten schools, declined in 1947 to expand or continue the released time program. Among the reasons stated were:

> Religious training is the special and particular sphere of the church. . . .
>
> The year's trial of 'Released time for religious education' has demonstrated that the program increases the work of principals and teachers, and results in certain confusion and loss of time to all children in the grade. . . . The results do not justify a continuation or extension of the plan.
>
> The program for 'Released time' falls short of having the support of all the churches of church people.[33]

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[31] Cited by Stokes, op. cit., pp. 530-531.

[32] Ibid.

[33] Liberty, Fourth Quarter, 1947, p. 32. Cited by Ibid.

The San Diego Board of Education showed, however, its deep interest in the moral, religious and spiritual problems involved by the adoption of several resolutions urging the schools to stress the teaching of moral principles. Too, the board pledged ". . . earnest cooperation with all worthy efforts and plans for religious instruction outside of school time."[34]

The Federal government has shown its interest in weekday religious education by publishing through the United States Office of Education a special bulletin on the subject.[35] This accepts as a satisfactory definition of the weekday church school one published in 1940 by the International Council of Religious Education in its pamphlet entitled The Weekday Church School, which describes it as - -

> . . .a school of religious education, distinguished by its close relationship with the public school, with which it cooperates, but with which it has no organic relationship. . . .
>
> The weekday church school is an essential part of the church's educational program, carried on under the direction of a local church or several churches in a community associated in a Council of Religious Education, or Council of Churches and its Department of Religious Education. . . .[36]

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[34] Ibid., p. 533.

[35] Mary Dabney Davis, op. cit., quoting from M.D. Sette, "Weekday Church Schools from Coast to Coast," International Journal of Religious Education, July 1929.

[36] Ibid., p. 2,3. Also quoted in Stokes, op. cit., 534.

Because children receive little formal education long religious lines, the released time program has been given serious consideration in many states. In the next chapter, the writer will present the legal status of religious instruction as it is found in the constitutions, statutes and court cases of the several states and the United States Supreme Court.

". . . . The rights hereby secured shall not be construed to exclude the Bible from use in any public school of this state. . . ."

The Mississippi State
Constitution
Article III, Section 18.

CHAPTER V

THE LEGAL STATUS OF RELIGIOUS INSTRUCTION ON RELEASED TIME

The practice of releasing pupils from public schools during regular public school hours to enable them to attend religious instruction given outside of the school under the direction of one or more religious denominations has presented a number of legal questions. Among some of the questions which have been raised in this connection are the following as outlined by Keesecker:

> (a) Do constitutional and statutory provisions which prohibit the use of public funds or public buildings for sectarian instruction of the teaching of religious doctrines or tenets extend so far as to prohibit the use of public school time for religious or sectarian instruction?
>
> (b) Is the practice mentioned in violation of compulsory school attendance laws which require attendance during 'full' or 'entire' school time?
>
> (c) May attendance upon religious instruction by pupils released from the public school for that purpose be coerced, directed, or supervised by public school authorities?
>
> (d) May public school authorities give pupils credit toward school graduation for religious instruction given outside of the school. . . .?
>
> (e) Does releasing of certain pupils to attend religious instruction. . . result in religious discrimination?[1]

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[1]Ward W. Keesecker, Laws Relating to the Releasing of Pupils From Public Schools for Religious Instruction (Washington: U.S. Government Printing Office, 1933), p. 1.

For the most part these questions remain generally unsettled. Stokes views this legal question as:

> . . . . a difficult one to deal with satisfactorialy because various phases of it are in process of consideration by the Supreme Court of the United States, and because of the related cases that will come up later. . . . Many . . . questions are still unsettled and there is nothing . . . that shows what the attitude will be toward them, and especially toward the entirely voluntary released-time instruction outside school buildings that is not directly sponsored by the schools, and also toward that variant known as 'dismissed' time where pupils are allowed once a week to go for religious training to the churches for thirty or sixty minutes before the normal close of the school day. . . . [2]

Several of the states have adopted statutes that have specifically legalized the released-time program. According to Stokes, these states are: "California, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New York, North Dakota, Oregon, Pennsylvania and South Dakota."[3]

The legislative provisions in some of these states are quoted below:

ILLINOIS

> Sec. 274. Every person having custody or control of any child between the ages of 7 and 16 years, shall, annually, cause such child to attend some public or private schools:. . . .(d) Any child over 12

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[2]Stokes, op. cit., p. 535.

[3]Ibid., p. 536. This same list is included in the pamphlet by Keesecker, op. cit., p. 4.

and under 14 years of age during the hours while in attendance at confirmation classes.[4]

IOWA

4410. . . . Any person having control of any child over 7 and under 16 years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public or private school. . . .

4411. . . . . The preceding section shall not apply to any child. . . .while in attendance at religious services or while receiving religious instruction.[5]

KENTUCKY

158.210 [4363-7b] Survey of Religious Preferences May be Made. -- The board of education of each school district may authorize a complete survey of all the pupils attending the public schools within the district and ascertain those pupils who desire moral instruction and have the consent of parent or guardian for the instruction.

158.220 [4363-7c] Time and Place of Moral Instruction. -- The boards of education shall fix one day each week when pupils who have expressed a desire for moral instruction may be excused for at least one hour to attend their respective places of worship or some other suitable place to receive moral instruction in accordance with the religious faith or preference of the pupils.[6]

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[4]The School Law of Illinois -- 1933, cited by Ward . Keesecker, op. cit., p. 3.

[5]School Laws of Iowa, 1929, cited by Ibid., p. 4.

[6]Kentucky Common School Laws -- 1942 (Frankfort: partment of Education, 1942), p. 709. This Kentucky atute is employed by schools in Frankfort, Covington, ris and Paducah, Kentucky for the offering of religious ucation programs or instruction to the public school pils on released time.

MINNESOTA

319. . . . Any child may be excused . . . . upon its being shown to the board:
. . . . That it is the wish of such parent. . . that he attend for a period or periods not exceeding in the aggregate of 3 hours in any week, a school for religious instruction, conducted and maintained by some church or association of churches, or Sunday school association incorporated under the laws of this State. . . . such school to be conducted and maintained in a place other than a public-school building. . . .[7]

OREGON

Sec. 35-3501. . . . Any child attending the public school, on application of the parents or guardian, may be excused from such school for a period or periods not exceeding 120 minutes in any week to attend week-day school giving instruction in religion.[8]

SOUTH DAKOTA

Section 277. . . . A child may, on application of his parents or guardian be excused from school 1 hour perweek for the purpose of taking and receiving religious instruction. . . .[9]

In other states, it has been declared to be unconstitutional to give credit for released time work.[10] On the other

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[7]Laws of Minnesota, 1948, cited by Houston, op. cit., School Laws of Minnesota," p. 4.

[8]School Laws of Oregon, 1931 as cited by Keesecker, op. it., p. 5.

[9]Session Laws of South Dakota, 1931, cited by Keesecker, id., p. 5.

[10]State ex. re. Dearle v. Frazier (1918), as cited by okes, op. cit., p. 536.

hand, the New York Court of Appeals, after contradictory opinions in the lower courts decided in 1927 that a public school may release students in school hours for instruction with credit.[11]

On the following pages, several of the important state supreme court decisions will be outlined in a brief form. Following these cases, the writer will also include several cases dealing with other phases of the public school in which the issue of religion and/or religious belief has been involved.[12]

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[11] Stein v. Brown (1925), cited by Ibid., p. 536.

[12] This last section will include the Scopes Trial Case, the Everson Bus Case and the McCollum Religious Education Case.

VERMONT

/ Ferriter v. Tyler, 21 Am Rep. 133 (1876) /

FACTS:

The local board in Brattlesboro, Vermont was asked to exempt all Roman Catholic children from attending school on all holy days. The school board replied:

> To comply with your request involves closing two of our schools, and greatly interrupting several others. This we have never done and cannot do. We have great pride in our schools, and Catholic children are treated as well as any.

Some 60 Roman Catholic children, by action of their parents were kept from schools to attend services on Corpus Christi Day.[13] Thereupon, the school authorities ruled that the children who had absented themselves on that day could not return to school without the assurance that their parents would comply, in the future, with the rules of the school. The parents refused to comply with this request and filed a bill of chancery to restrain the school authorities from excluding their children from the public schools.

ISSUES:

1. Does the excluding of children from public school for

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[13] Corpus Christi Day is June 14th.

refusal to attend school on holy days interfere with the freedom of religious conscience?

2. Do parents have the authority to control school attendance of their children?

DECISIONS:

1. No.

2. No.

REASONS:

1. The law has no preference for religion and all children are subject to the laws of the school.

2. Parents have no right to defy the laws that respect them as citizens in regard to the administration of the public schools.

WASHINGTON

[State v. Frazier, 173 Pac. 35 (1918)][14]

FACTS:

The board of education of Everett adopted the following resolution:

> Resolved. . . . that high school credit for Bible study be allowed to the members of the Everett high school to the extent of one credit on the Old Testament Scriptures and one credit on the New Testament Scriptures under the following conditions:
>
> First. Credit shall be granted only after successfully passing an examination covering the historical, biographical, narrative, and literary features of the Bible, based upon an outline to be hereafter adopted by the board of education.
>
> Second. Supervision of instruction in Bible shall not be undertaken by the high school beyond the furnishing of a syllabus or outline and the setting of examination, rating of papers, and determining credit.
>
> Third. It is contemplated that all personal instruction and interpretation shall be given in the home or by the religious organization with which the students are affiliated. . . .
>
> Fourth. Not more than one credit in Bible shall be allowed an individual in any one year.
>
> Fifth. It is assumed that this work will require one 45 minute lesson per week through the school year. . . .

T The Constitution for the State of Washington provided that public money shall not be appropriated for religious worship or instruction.

The school superintendent refused to give any of the

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[14]Cited by Keesecker, op. cit., p. 7.

appellants an examination in the course of Bible study or to give credit therefor toward graduation. This is an action to compel him to do so.

ISSUES:

1. Shall this study be deemed religious instruction?
2. Does the granting of credit result in religious instruction?

DECISIONS:

1. Yes.
2. Yes..

REASONS:

1. The study results in religious instruction because the court reasoned that the Bible cannot be taught without leading to opinions and sectarian view points.
2. The court reasoned that granting credit for Bible study cannot be allowed due to the difference of opinion that would be evident in the answering of questions.

NEW YORK

[Stein v. Brown, 211 N.Y. Supp. (1925)][15]

FACTS:

The board of education of the city of Mount Vernon, New York, excused pupils for 45 minutes once each week during school hours to enable them to receive religious instruction in the churches of their choice. Cards, used by parents to notify school authorities what church they wished their children to attend and used by the teachers of religious instruction to notify school authorities when such children received religious instruction in church, were printed by the students in the Industrial Arts School of the City of Mount Vernon during school hours upon printing presses furnished by public funds. The cost of the actual printing was paid by the local committee on week-day religious instruction.

ISSUES:

1. Is the printing of cards during school hours on presses furnished by public funds lawful?
2. Is it lawful to excuse pupils during school hours from regular school studies to attend religious

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[15]Cited by Ibid., pp. 9-10.

education classes held outside of the regular school building?

DECISIONS:

1. No.
2. No.

REASONS:

1. State funds were used indirectly in the printing of the cards.
2. Religious education is not prescribed as a part of the public school curriculum in this state.

NEW YORK

[People ex. re. Lewis v. Graves, 156 N.E. 663 (1927)][16]

FACTS:

The school board of the city of White Plains in the year 1925-26 adopted the practice of excusing pupils from the elementary school, upon request of their parents, for 30 minutes each week in order that the pupils might attend classes of religious instruction provided by the churches of the various denominations. No credit was given for the work and there was no expenditure of public funds.

ISSUES:

1. Is there a violation of using public funds for religious purposes?
2. Is this dismissal in violation of the compulsory attendance law?

DECISIONS:

1. No.
2. No.

REASONS:

1. The facts in this case establish no violation of

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[16]Cited by Ibid., pp. 10-11.

the constitutional provision providing that there can be no use of public funds for sectarian purposes.

2. This act of releasing pupils is within the power of the local board of education.

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of greivances."

Amendment Number One
Article I
The Constitution of the United States of America

CHAPTER VI

THE UNITED STATES SUPREME COURT AND THE EVERSON BUS CASE

The so-called New Jersey bus law, as passed by the legislature of New Jersey in 1941 reads:

> Whenever in any district there are children living remote from any school house, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of such children to and from school other than a public school, except such school as is operated for profit in whole or in part.[1]

The township of Ewing made it a practice to reimburse parents of parochial school children who used the public transportation system of Ewing, New Jersey. The constitutionality of the above law was, then, contested before the New Jersey court by a taxpayer, Arch R. Everson who challenged the right of the board of education of Ewing to reimburse these parents of parochial school children.[5]

A New Jersey court held that the legislature was without the power to authorize such payment under the state constitution. The New Jersey Court of Errors and Appeals

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[1]Cited by Stokes, op. cit., p. 702.

[2]Ibid. Also, for a full discussion of this case, see O'Neill, op. cit., pp. 189-218. In addition, full discussion of the case was presented in the 1947 issues of the Christian Century.

reversed this decision, holding that the legislative action was not in conflict with the state and Federal constitutions.[3]

ISSUE

The important question in this case, the one that received the most attention from the United States Supreme Court was: "Does the New Jersey law authorizing payment from public funds for the transportation of pupils to parochial school violate the First Amendment . . . . ?"[4]

DECISION

The United States Supreme Court supported in a 5 to 4 decision the judgement of the New Jersey Court of Errors and Appeals.

REASONS AND OPINIONS

The opinion of the cour was written by Justice Hugo Black. It stated:

> The only contention here is that the State statutes and the resolution, insofar as they authorize reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects. . . . First. They authorize the State to take by taxation the private property of some and bestow it upon others.

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[3] Ibid.

[4] O'Neill, op. cit., p. 202.

> . . . Second. The statute and the resolution forced the inhabitants to pay the taxes to help support and maintain schools which are dedicated to, and regularly teach, the Catholic Faith. This is alleged to be a use of State power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the states.[5]

Further on in his opinion, Justice Black gives the stand of the Supreme Court in its efforts to define and protect religious liberty:

> 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. Neither can force nor influence a person to go to or remain away from church against his will. . . .
>
> We must consider here the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that State statute down if it is within the State's constitutional power even though it approaches the verge of that power. . . . New Jersey cannot consistently with the 'establishment of religion' clause of the First Amendment contribute tax-raised funds to support an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. . . . Or the members of any other faith, because of their faith, from receiving the benefits of public welfare legislation. . . .
>
> Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. . . . That Amendment required the state to be a neutral in its relations with groups of believers and non-believers. . . .

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[5] 330 U.S. 1, Everson v. Board of Education, p. 33, note 59.

> . . . . It appears that these parochial schools meet New Jersey's requirements. . . . Its legislation. . . does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.
>
> The First Amendment has erected a wall between church and state. The wall must be kept high and impregnable. We could not approve of the slightest breach. New Jersey has not breached it here.[6]

Hence, the court though stressing the supreme importance of maintaining the "wall of separation between church and state" and, recognizing that the state in passing this legislation approches the "verge" of its constitutional power held that it did not exceed it.

The dissenting opinions in the Everson case show both the complicated issues involved and the public interest in the problem of religious freedom in education.

Justice Robert H. Jackson, in his dissent, in which Mr. Justice Frankfurter concurred, felt that "undertones" of the court's opinion advocating ". . . complete separation of Church and State were utterly discordant with its conclusion yielding support to their commingling in educational matters."[7] Further, he added:

> Our public school, if not a product of Protestantism, at least is more consistent with it than with Catholic culture and scheme of values. . . .
>
> Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself. . . .[8]

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[6] Ibid., pp. 13-16. [7] Ibid., p. 1.

[8] Ibid., p. 6.

> . . . . But we cannot have it both ways. Religious teaching cannot be a private affair when the states seek to impose regulations which infringe on it indirectly. . . . If these principles seem harsh in prohibiting aid to Catholic education, it must be remembered that it is the same Constitutional protection that alone assures Catholics the right to maintain their schools. . . . [9]

In agreement with the need for absolute separation of church and state in education, Mr. Justice Jackson closed his dissent by stating that the majority opinion is "Unconsciously turning the clock's hand a backward turn."[10]

PUBLIC REACTIONS

The Supreme Court's decision in the New Jersey bus case created unusual interest and important reactions. A few examples may be cited. The New York Times on the following day (February 11, 1947) published a two-column dispatch beginning on the front page with large headlines. Two days later an editorial, in the same paper, was devoted to it and pointed out particularly the danger that the decision, unless reversed in a subsequent case, might be a first step towards attempts to secure ". . . . more extensive support of religious education by New Jersey."[11]

The Roman Catholics hailed the decision as an important victory for the rights of all the Roman Catholic taxpayers,

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[9] Ibid., p. 10. [10] Ibid.

[11] Editorial, New York Times, Feb. 13, 1947.

and for the cause of religious education.[12]

The Christian Century in its editorial column stated:

> . . . . all Americans who profess allegiance to Protestantism, Judaism or any other religious faith, and those though professing no church allegiance believe in the American form of government [should] . . . . demand that legislatures and executives and courts shall defend the Constitution against all efforts to thwart it.[13]

In a summary of this case, Stokes writes:

> . . . . First, that in their opinion [the court] the Constitution does not forbid indirect aid to parochial schools. . . . Second, that the aid given was to the pupils in the parochial schools, not to the schools themselves. . . . and third, that a state should be given much freedom in deciding what the 'public welfare' demands in borderline Constitution cases.
>
> Supporters of religious freedom are divided as to the best future course. Some believe in pressing the issue further before the courts; others, recognizing that it was a borderline case, believe in accepting the court's decision, at least for the present, and devoting their attention to the more serious Church-State issues. Logic probably favors the former position, expediency, the latter.[14]

Another United States Supreme Court case that is related to public education is the McCollum Religious Education Case. This case will be discussed on the following pages.

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[13]Editorial, Christian Century (Nov. 5, 1947), cited by Stokes, op. cit., p. 710.

[14]Ibid., p. 711.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law. . . ."

Amendment Number Fourteen
Article 14 No. 1
The Constitution of the United States of America

CHAPTER VII

THE McCOLLUM RELIGIOUS EDUCATION CASE

In the McCollum[1] case the School Board of Champaign, Illinois, acting under the authority given them by the laws of the state, allowed the Champaign Council of Religious Education, an association of Jewish, Roman Catholic, and Protestant faiths to conduct classes in religious education in the public schools during school hours. Pupils were admitted upon the written request of their parents to classes designated by their parents. Pupils representing thirty-one different denominations participated in these classes the year before the case was tried in Illinois.[2]

After several years of this practice, Mrs. McCollum registered a complaint and brought suit to stop the plan of religious education in the public schools.

The Illinois Court upheld the Champaign practice under the Illinois law, and the case was appealed to the Supreme Court of the United States.

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[1] People of the State of Illinois, ex. re. Vashti McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, et. al., No. 90 October Term, 1947. 333 U.S. 203.

[2] O'Neill, op. cit., p. 219. O'Neill devotes an entire chapter to a discussion of this case and takes personal opposition to the Supreme Court decision regarding it.

ISSUE

O'Neill outlines the issue as being:

> In more general terms the question presented to this court is whether a statute or regulation permitting religious instruction in public school classrooms during school hours is a law respecting an establishment of religion within the prohibition of the First and Fourteenth Amendment.[3]

DECISION

The court, after extensive deliberation, declared early in 1948, in an 8 to 1 decision, that the Champaign procedure was unconstitutional. It spoke through Justice Hugo Black, who held that the facts:

> . . . . showed the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend religious classes. This system is beyond all question a utilization of the tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, 330 U.S. 1.[4]

The opinion goes on to repeat the decisions made in the Everson case[5] and declines to change them, ending this opinion

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[3]O'Neill, op. cit., p. 222.

[4]McCollum v. Board of Education, op. cit., p. 6.

[5]Ibid.

in the following terms:

> Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the Everson case, counsel for the respondents challenge those views as dicta and urge that we reconsider them. . . . In addition they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented we are unable to accept either of these conditions.
>
> Here not only are the state's tax-supported public school buildings being used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps them also to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State.[6]

The Frankfurter opinion on this case passes on some statements that are significant for the future. Here are a few of them:

> . . . . The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. . . .
>
> . . . .Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. . . . The public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. . . .[7]
>
> We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time' present

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[6]Ibid., p. 7. [7]Ibid., p. 16.

> situations differing in aspects that may well be constitutionally crucial. Different forms which 'released time' has taken during more than thirty years growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. . . .[8]
>
> . . . . If nowhere else, in the relation between Church and State, 'good fences make good neighbors.'[9]

A study of all the opinions will show that all members of the Court except Mr. Justice Reed clearly believed that the Champaign type of cooperation between churches and the schools in providing sectarian religious education in school buildings during regular school hours was unconstitutional.

In other words, the decision is perfectly clear that churches are denied the right to enter the public schools on school time and teach religion there. It does not, of itself, seem to prevent the practice of dismissing pupils to attend classes outside of the public school building.

As a result of this decision Stokes states:

> . . . .that the states are adjusting their programs of religious education to conform to the McCollum decision. For example. . . . Oregon has required religious education classes to be moved away from public-school buildings. South Carolina . . . has announced that credit toward graduation will no longer be given for Bible study classes, and teachers will no longer be certified by the State for Bible teaching. Ohio has left the whole matter to local discretion. . . .[10]

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[8] Ibid., p. 19. [9] Ibid., p. 20.

[10] Stokes, op. cit., p. 523.

"And God said, Let us Make man in our image, after our likeness: . . . . So God created man in his own image, in the image of God created he him. . . ."

Genesis
I: 26-27.

CHAPTER VIII

THE TEACHING OF EVOLUTION IN THE PUBLIC SCHOOLS

The teaching of evolution in the public schools had developed in the 1920's a controversy in which the churches and the public were much concerned. It was not as much a struggle of church and state as such but, the difference of opinion between certain reactionary groups in both church and state on a matter in which religion and/or its sectarian interpretation is involved.

The issue gained ation in 1925 in the so-called Scopes Trial at Dayton, Tennessee. That year, the Tennessee State Legislature had passed an act thus specified in the Tennessee State Code:

> It shall be unlawful for any teacher in any of the universitites, teachers' colleges, normal schools or other public schools of the state which are supported in whole or in part, by the public funds of the state to teach any theory that denies the story of divine creation of man as taught in the Bible, and to teach that man descended from a lower order of animals.
>
> Any teacher violating the preceding section shall be guilty of a misdeameanor and fined not less than five hundred dollars for each offense.[1]

John Thomas Scopes, a teacher in the high school of Dayton, Tennessee, who would not support the anti-evolution law adopted by the legislature, used in his class a textbook

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[1] The Tennessee State Code (1942), Sec. 2344 and 2345.

in biology which stated:

> . . . .the earth was once a hot, molten mass, too hot for plant or animal life to exist upon it; the earth cooled, the sea formed, and a little germ of a one cell organism was formed in the sea; this kept evolving till it got to be a pretty good sized animal, then came on to be a land animal, and it kept evolving and from this was man.[2]

The continued to teach this doctrine and, as a result he was arrested. What followed was one of the most amazing trials in the history of American education. On the one hand was William Jennings Bryan, leading the forces of fundamentalism, anti-evolution and reaction. On the other hand was Clarence Darrow, a well-known agnostic.

Bryan sought to prove that the Bibical account of creation in all its details was inspired by God. He also claimed that the world was created in 4004 B.C.[3] Further, he believed that Eve actually and literally was a product of Adam's rib.

Darrow and his associates showed the inconsistencies in the Bible and the gaps between the Old Testament and modern science. They maintained that the law was unconstitutional on the grounds that it fostered a particular type of religious education in the public schools.

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[2]American Year Book (1925), p. 87.

[3]See Stokes, op. cit., p. 592.

In his argument, Mr. Darrow called the law the, ". . . . most brazen attempt to destroy liberty since the Middle Ages."[4]

After a lergthy trial, judgement was rendered against the defendent without any facing of the broad issue involved.[5]

The argument was heard, on appeal, on June 4, 1926, by the Supreme Court of Tennessee. Emphasis was laid upon the favoritism given to the fundamentalist sects and on the indefiniteness of the law itself. To keep the case from reaching the United States Supreme Court, the decision reversed the fine imposes on Scopes on the ground that is was improperly imposed.[6]

Following the Scopes trial, two other Southern states of the "Bible belt" followed Tennessee in adopting anti-evolution legislation: Arkansas and Mississippi. The Mississippi statute is even more specific than that of Tennessee. It reads thus:

> It shall be unlawful for any teacher or other instructor in any university, college, normal, public school or other institution of the state which is supported in whole or in part from the public funds derived by state or local taxation to teach that mankind ascended or descended from a lower state of animals and also it shall be unlawful for any teacher, textbook commission or other authority

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[4] Ibid., pp. 596-597.

[5] Ibid.

[6] Scopes v. State, 154 Tenn. 105.

> exercising the power to select textbooks for above mentioned institutions to adopt or to use in any such institutions a textbook that teaches the doctrine that mankind ascended or descended from the lower order of animals.[7]

The anti-evolution legislation was not confined to states south of the Mason-Dixon line, though there it did find more fertile soil.[8] For instance, in Minnesota, about the same time as the Tennessee action, an evolution law was proposed making it unlawful to teach that ". . . . mankind either ascended or descended from a lower order of animals."[9]

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[7]The State Code of Mississippi (Jackson: Hemingway Press, 1940), sec. 9493.

[8]Although other Southern States did not enter a law upon the statutes, the same results were often accomplished by the local school authorities.

[9]George T. Lee, Church and State (Minneapolis: University of Minnesota Press, 1927), p. 47.

SUMMARY

In conclusion it may be stated that this study has revealed several facts. First, the courts will as a rule uphold released time for religious instruction when that instruction is held outside of the school building. Due to this, several of the States have enacted special legislation allowing the releasing of pupils for religious instruction.

Second, twelve states require Bible reading by law and others specifically permit this practice in the morning exercises of the public school classroom. This practice enables the student to hear readings from the Scriptures, but all states either ban or imply that there is to be no oral or written interpretation. Therefore, this practice cannot be classified as religious instruction in the schools.

Third, the United States Supreme Court has upheld indirect aid to parochial schools. This seems to indicate that the government is more lenient towards religious schools than in the past when Vermont, for example, refused to dismiss students on holy days. In the present it is, as in the State of Florida, not uncommon to dismiss pupils on religious holidays.

In general, the people of the United States have become aware that the verbal phrase -- "Our schools are Godless" -- is more than a trite attack on the public

schools. In recognizing that the curriculum is secular and void of religious instruction, constructive steps have and are being taken towards correction of this situation.

Religious instruction seems to work in many areas and the program, begun in Gary in 1914, is still in effect in many states. The dismissal of pupils from the school building releases teachers and administrators from all responsibility towards such instruction and, thereby, avoids commingling of church and state.

The need for religion in the curriculum has been felt and the writer believes that further study would determine the effectual value of religious instruction on dismissed or released time. In addition, a study should be made concerning the recent impetus given the moral and spiritual instruction that is being offered through the subject matter courses. A comparison of this latter with the religious instruction program would, possibly, reveal the benefits of both and determine which one is the more practical for the public schools.

It is the writers' hope and belief that the final solution lies in cooperative planning for religious instruction to be given outside the school building. This is stated because of the personal belief that the matters

of the spiritual life of man are only capable of being taught by the trained clergy of the churches.

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