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Diametrically opposed forces: Religion and the American public education system.

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DIAMETRICALLY OPPOSED FORCES: RELIGION AND THE AMERICAN PUBLIC EDUCATION SYSTEM

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THESIS ACCEPTANCE

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ABSTRACT

The purpose of this investigation was to examine the American judicial system in answering four specific issues concerning religion and the American public schools from kindergarten through twelfth grade. These four issues include (1) prayer in public schools, (2) the teaching of the theory of evolution versus creation, (3) religious ceremony at public school graduation, and (4) public school facilities for religious use. Specifically, with respect to these four issues, the U.S. Supreme Court has ruled that (1) it is unconstitutional to have prayer in public schools, (2) it is unconstitutional to teach the theory of creation in public schools; however, it is not unconstitutional to teach the theory of evolution, (3) it is unconstitutional to have a religious ceremony at public school graduation, and (4) it is unconstitutional for public schools to discriminate against religious organizations when renting the school facilities for religious use. Additionally, issues concerning for and against the teaching of and about religion in public schools are discussed. The investigation concludes that religion should not be a part of the American democratic and pluralistic public education system. Religion, instead, is best left to the homes, families, churches, synagogues, mosques, and temples since religion is a highly personal and sensitive issue that should rest with individual interests, values, beliefs, and family traditions.

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CHAPTER I

INTRODUCTION

> We hold these truths to be self-evident, that all men [and women] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.... (Commanger, 1968, p. 100).

These are the words expressed in the Declaration of Independence of the United States of America signed on July 4, 1776. In addition, the Constitution of the United States of America (Commager, 1968, pp. 139, 147, 146) holds

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence [sic], promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish...
>
> 1. All persons born or naturalized in the United States 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 laws....[As stated in the Fourteenth Amendment]
>
> 2. 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 grievances [as stated in the First Amendment].

Thus, what does it mean to be an American or "E pluribus unum,"—one out of many—raised in the public school environment? What goals and expectations do American public schools wish to inculcate in its students? More important, should religion be made a part of the normal public school curriculum, extracurricular activities, or both?

Proponents who desire to have religious study in public schools believe that religion would bring about understandings of (1) the historical context of religious writing, (2) the literary forms that religion employs, (3) the ideas and convictions that religion conveys, (4) the religious practices, rituals, and ceremonies involved, and (5) the system of moral values embodied in religious writing (Barr, 1990). These religious proponents are located everywhere in the United States and their organizations include the American Family Association, Christian Coalition, Citizens for Excellence in Education, Concerned Women for America, Eagle Forum, Traditional Values, and Focus on the Family (Arocha, 1993; McCarthy, 1996).

These proponents contend that religious literature, when studied, is not to make a student more or less religious, but to insure that all students are educated about important documents of the world's culture and worldviews (Barr, 1990). They believe that by including a range of relevant religious literature, the public school demonstrates its intention to study the literature as an aspect of culture not endorsing one body of writing (Barr, 1990).

Additionally, these proponents cite concerns about the perceived decline in the standards of national morality and the rise in societal problems as the all important reason for incorporating religion in public schools (Layton, 1996). They attribute crime, violence, drugs, and teenage pregnancy to the dominance of secular subjects in the public schools (Arocha, 1993; Layton, 1996; McCarthy, 1996). Furthermore, these religious advocates insist that sex and AIDS (Acquired Immune Deficiency Syndrome) education, drug education, performance- or outcome-based education, coeducational physical

education, multicultural education, and school textbooks which they deem offensive to their religious beliefs are causes of societal problems and should be banned from the public schools (Arocha, 1993; McCarthy, 1996). As a result, these religious enthusiasts work to return the public schools to the four R's: reading, 'riting, 'rithmetic, and religion (McCarthy, 1996; Pulliam & Patten, 1995). Additionally, their goals are to (1) eliminate objectionable materials and programs from public schools, (2) secure exemptions for their children from public school activities considered objectionable, (3) return devotional activities to the public schools, and (4) increase opportunities for parents to select private schools that conform to their religious beliefs and values (McCarthy, 1996).

As Losito and Gordon (1996) explain in their writing, "Religion in Public Education: Debates and Rebuttals," these religious advocates often reason that (1) religion is essential for the effective preparation of one's civic participation in a society as pluralistic as America, (2) religion motivates students to learn about themselves as a means of being informed participants in society, and (3) religion helps students search for meaning in personal and communal life.

In contrast, opponents to block the implementation of religious study in public schools believe that the very notion of elected school officials or school personnel selecting religious activities, passages, rituals, and doctrines would conflict with the students' religious freedom to think, believe, and express (Losito & Gordon, 1996) as guaranteed under the First Amendment of the U.S. Constitution which stated, in part, "Congress shall make no laws respecting an establishment of religion ..." (Klein, 1983, p. 166). These opponents include People For the American Way, American Civil

Liberties Union, National Education Association, and the American Federation of Teachers (Reed, 1993). Additionally, these groups believe the study of religion in public schools would conflict with life values and beliefs held by the students through their family backgrounds, values, and upbringing (Losito & Gordon, 1996). Furthermore, they believed that within each public school classroom, a mixture of religious beliefs and worldviews can be found with some students believing in Christian faiths, some are non-believers, some believe in other faiths, and some are in between (Losito & Gordon, 1996). Consequently, a school-sponsored religious study in the public classroom could be offending to both religious and nonreligious students alike.

Issues concerning who will teach and lead religious activities is important to consider (Losito & Gordon, 1996). For example, would a Protestant, Agnostic, or Atheist parent, or parent of a different religion be content, or even satisfied or want a non-Christian teacher conducting religious activities that involve their children (Losito & Gordon, 1996)? According to Losito and Gordon (1996), the idea and belief that through a one- to two-minute prayer or readings from a religious text like the Bible—with or without comments, or both—that morality will be taught, is based on the assumption that children understand the language of the text. Losito and Gordon suggest that a one- to two-minute prayer is, at best, a ritualistic exercise; and that reading passages from texts with language as complex as that found in the Bible, the Torah, or the Koran requires, if they are to have meaning to the students, interpreting that necessitates study, understanding, and acceptance on the part of the teacher (Losito & Gordon, 1996).

According to Haynes, a scholar at Vanderbilt University, "Religious consensus in the Untied States is not possible, and any attempt to impose [religion] in public education would be unjust and unconstitutional" (Loconte, 1996, p. 21). Haynes adds, "People who look back to the good old days should remember that there were no good old days in public schools. [People] were bitterly divided" (p. 21). Thus, the role of religion in American public life has always been ambivalent because of people's commitment to religious freedom as guaranteed by the First Amendment, made applicable to the states by the Fourteenth Amendment of the U.S. Constitution (Losito & Gordon, 1996).

Additionally, other scholars believe that the schools' job is to help build a secular democracy. For example, Kniker (1988) believes the goals of the American public schools are fivefold. First, the American public schools should inculcate in the students common citizenship skills and attitudes to ensure that the students would be loyal and literate patriots. Second, schools should inculcate in the students a common creed: "love of truth, love of country, humanity, universal benevolence, sobriety, industry, chastity, moderation, temperance." Third, schools should inculcate in the students common experiences that ensure the barriers between class and race, rich and poor, and new-comers and old immigrants will disappear when students share the same teacher, school desk, lunch and recess, and read identical books. Fourth, schools should inculcate in the students common opportunities so they can learn acceptable ways of becoming successful in the workplace and home; and students will learn to believe that virtue will be rewarded and vice will be punished. Last, American public education should inculcate in students

common reform strategies. For a clarification on the joint statement of the current law on religion in public schools, please refer to Appendix A.

America is a unique country and is set apart from the rest of the world in that its demographics consist of many ethnicities. These ethnicities include Anglo-Saxons, African Americans, Asian Americans, Native Americans, and Hispanics. This diversity results in a population with a multitude of religious beliefs. Because the Constitution of the United States of America framed in 1787 by the "founding fathers," which became effective on March 14, 1789, did not relegate the responsibility of education to the federal government; education in America, fundamentally, was left up to the individual states. As a result, the United States is a country with a decentralized form of government and each of the fifty states has its own guidelines and regulations concerning teacher certification and student training.

Additionally, the First and the Fourteenth Amendments, respectively, of the United States Constitution states, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ..." That, "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...."

Thus, with the ratification of the Fourteenth Amendment to the U.S. Constitution in 1868, making the First Amendment applicable to the states, the federal government created diametrically opposed forces between one's rights to freely express his or her sincerely held religious beliefs, on the one hand, and the governments' prohibition

against the establishment of a religion, on the other. This conflict was the focus of this investigation.

Purpose of the Research

The purpose of this investigation was to learn more about significant school-related legal issues and tensions concerning the Establishment Clause and the Free Exercise Clause as they relate to religion and the American public education system from kindergarten through twelfth grade.

This investigation will first discuss issues concerning prayer in public schools. Next, the research will discuss issues concerning teaching the theory of evolution and creation in public schools. Third, the research will discuss issues concerning religious ceremonies at public schools graduation. Finally, the research will discuss issues concerning public school facilities for religious use.

Research Question

This investigation centered on one historical question. How has the American judicial system resolved significant issues and tensions concerning the First Amendment's Establishment Clause and the Free Exercise Clause as these issues related to religion and public schools from kindergarten to twelfth grade?

Limitations

This investigation was limited to significant issues and tensions relating religion and public education in (1) prayer in public schools, (2) teaching of evolution versus creation in public schools, (3) public schools religious ceremony (e.g., invocation and benediction) at graduation, and (4) public school facilities for religious use.

Additionally, this investigation was limited to the American public schools from kindergarten to twelfth grade. Issues concerning higher education and private nonreligious schools were not studied.

Research Method

The investigation method was to examine scholarly journals, books, and state and federal court documents. To achieve these objectives, local area library databases at College of Saint Mary and the University of Nebraska-Lincoln were used. In addition, the University of Nebraska-Omaha Genisys computerized catalog system, and the Inter-Library Loan privileges were used to find needed information. On-line law database system from Lexis, Yahoo and AltaVista search engines from the World Wide Web, scholarly journal databases from EBSCOhost and FirstSearch, and educational and psychological databases from Educational Resources Information Center (ERIC) and PsycLIT were also used to search for essential and topic-related journal information.

This investigation was a culmination of scholarly journals, case laws, and learning from class lectures and textbook. In selecting significant court cases for this investigation, the investigator read hundreds of journal articles encompassing the four issues relating to the research question. In addition, having taken and successful completed a School Law class, EdAD 9540-001, from the investigator's College of Education a semester prior to this undertaking, the investigator was able to discern significant cases related to this investigation. Furthermore, several books pertaining to the history of religion and public education in America written from the 1950s to the 1990s were read to learn more about issues concerning the investigation. The

investigator noted issues and court cases pertinent to this investigation were discussed and cited on many occasions. Consequently, this gave rise to the selected cases for this investigation.

During the investigation and the reading process of the research, the investigator kept four separate folders for four researched issues, namely prayer in public schools, teaching of evolution versus creation, religious ceremony at public school graduation, and public school facilities for religious use. The investigator used these four investigative issues as the research guide in readings and searching for information. Once all the information from the investigation had been read, noted, and categorized, the investigator began to synthesize, evaluate, and compare scholarly journals and books to that of case laws written by the United States' and States' Supreme Court Justices as a means to achieve a deeper understanding of the research issues involved. Consequently, this allowed the investigator to focus on the findings so that the Research Question could be answered in the most direct and logical way. This investigation used the American Psychological Association, 4th edition, documentation format.

Definition of Terms

1. **Balanced Treatment:** An idea that the same amount of instructional time and teaching materials must be devoted to the theory of evolution as well as the theory of creation whenever that subject is discussed in the public classroom (Aguillard v. Treen, 634 F. Supp. at 429, 1985).

2. **Compulsory Education Law:** A law which requires public school students to attend school on the theory that it is for the benefit of the states to educate the students

(Pulliam & Patten, 1995, p. 287). For example, in McCollum v. Board of Education, 333 U.S. at 205, 1947, students between the age of seven and sixteen had to go to school; otherwise, the parents were charged with a misdemeanor and fined.

3. **Denomination:** The accommodated and routinized sect (O'Dea, 1966, p. 69).

4. **Due Process Clause:** An important concept of liberty embodied in the Fourteenth Amendment of the U.S. Constitution which states, "No states shall deprive a person of life, liberty, or property without his or her due process of law" (Freund & Ulich, 1965, p. 8; Weinstein, 1979, p. 17). This Clause made the First Amendment—"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof" applicable to the states (Freund & Ulich, 1965, p. 8; Weinstein, 1979, p. 17).

5. **Equal Access Act:** States that it is illegal for public secondary schools which receive federal financial assistance and which have a limited open public forum to deny or discriminate against students who wish to conduct a meeting, regardless of the student's religion, political affiliation, philosophy, or the content of the speech (Mawdsley, 1996, p. 358).

6. **Establishment Clause:** The "A" part of the First Amendment of the United States Constitution which declares that there can be no officially established religion in America, and that the government is forbidding from meddling in the religious matter (Klein, 1983, p. 166). In addition, this Clause states that government must remain neutral toward all religions, and it must keep the wall of separation between church and state high and impregnable (Butts, 1950, p. 91).

7. **Free Exercise Clause:** The "B" part of the First Amendment which guarantees American people the right to believe, or not to believe; to worship or not to worship; to join a church or not to join a church; and to be an agnostic or an atheist (Klein, 1983, p. 166; Griffiths, 1966, p. 109).

8. **Lemon Test:** A three-part test derived from Lemon v. Kurtzman in 1971 in which the United States Supreme Court ruled that in order for the Establishment Clause not to violate the First Amendment, the law must meet all three parts of the test: (1) the law must have a secular purpose, (2) the action must not advance nor inhibit religious practices, and (3) the action must not entangle church and state. If any of the three-part test fails, then the Establishment Clause also fails (Aquila & Petzke, 1994, pp. 2.3-2.4).

9. **Public School:** Any kindergarten through twelfth grade school that is publicly owned, operated, and supported by state tax moneys. The public schools are free to all the students.

10. **Religion:** is based upon faith in which faith involves an assent to tenets which transcend experience, and may include a God head (O'Dea, 1966, p. 115).

11. **Religious School:** Any school that is religiously controlled and operated. These schools can include Protestant denominations, Roman Catholic, Jewish, Hindu, Islamic, Confucius, and other religious groups.

CHAPTER II

REVIEW OF LITERATURE

"No questions have provoked as much discussion or prompted as much litigation during the past three decades in church-state relations than the role of religion in public schools" (Klein, 1983; LaBrecque, 1983; Lee, 1982; Sendor, 1983; Weinstein, 1979; Wood, 1979, p. 63). Additionally, "Questions concerning the role of religion in public schools are critical issues in the U.S. church-state relations" (Butts, 1950; Griffiths, 1966; Kliebard, 1969; Lee, 1982; Williams, 1991; Wood, 1979, p. 63). Consequently, "From the birth of this nation, America's challenge has always been to live with its deepest differences, and with exploding religious pluralism in America, America is confronted in the school and in the nation with unprecedented challenges and opportunities" (Haynes, 1992, p. 47).

Wood (1979) noted that the United States was the first nation in history to constitutionally prohibit the establishment of religion and to guarantee the free exercise thereof. This view, Wood asserted, has frequently been referred to as the greatest single concept America has contributed to civilization. Haynes (1994) added, "Thanks in large measure to the Religious Liberty Clauses of the First Amendment, this country [America] remains the boldest and most successful experiment in living with religious differences the world has ever seen" (p. 30).

In addition, Wood (1979) noted that the first schools in America were avowedly religious, not secular. For example, Wood maintained America's first education laws, enacted in Massachusetts in 1642 [Massachusetts Compulsory School Law] and 1647

[Old Deluder Act], explicitly acknowledged that common schools were to be organized to teach children "to read and understand the principles of religion and the capital laws of this country" (p. 64). Banks (1997) showed that from 1840 to 1890, waves of immigrants, particularly those from southern and eastern Europe, greatly increased the multi-faith character of American society by bringing to the nation increasingly large numbers of Roman Catholics, Eastern Orthodox Christians, and Jews. As these newly arriving immigrant groups integrated into American life, they began to challenge any form of religion establishment, especially when manifested in public schools (Wood, 1979). Consequently, "As the state-church gave way to disestablishment and pluralism in the New World, so the free, secular public school gradually emerged and in time supplanted the sectarian school which had dominated during the colonial era and in the early decades of the new Republic" (p. 64). Additionally, "With the growth of experimental science, international trade, and religious diversity of the population, the religious character of America's schools was increasingly a source of conflict and resulted in an increased demand for secular subjects without ecclesiastical or sectarian control" (p.65).

The word religion, by one definition, is defined as "the relation of man to the supernatural being called God" (Hunt, 1969, p. 24). By another, it is defined as "the loyalty of man to his ultimate values and conviction that control his conduct" (p. 24). Yet, another definition "compared religion to sex in that human beings need it" (Lee, 1982, p.1). Lee insisted that people cannot claim that the human race can survive without

sex or religion, and that no society has thus far survived in the protracted absence of sex or religion.

Hunt (1969) indicated that there are more than 250 religious denominations that exist in America where children attend public schools (p. 24). Hunt suggested that the many faiths children bring to a public school can be an invitation to distractions and disputes. Nevertheless, Hunt added, "If the difference and varieties of insights are treated as normal and in no way shameful, they may spark learning and provide occasions for growth in knowledge" (p. 24). According to Haynes (1994, p. 32), "the battles about worldview cannot be resolved either by excluding all religious perspective or by establishing one religion or worldview over all others since both approaches have been tried in America's history, and both have violated the spirit and the words of the First Amendment."

Lee (1982) suggested that the purpose of American public elementary and secondary school is to provide a general education for students. Lee noted that the goal of any public school is to provide an education that meets the basic needs of the people. The U.S. Supreme Court has asserted that teaching about religion, and not the teaching of a particular religion, is an integral part of secular education (Wood, 1979). For example, Lee (1982) explained that the phrase "teaching about religion" specifically refers to the kind of educational activity in which religion is taught as an object of study rather than in a manner deliberately designed to enrich the learner's personal religious life (p. 8). In contrast, teaching of religion is aimed at helping the learner find out what and how the student should believe, and to practice those beliefs in the classroom (Lee, 1982).

In fact, in Illinois ex rel. (on relation of) McCollum v. Board of Education (1948), Justice Robert H. Jackson wrote, "Nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with the religious influences derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's people" (Wood, 1979, p. 71). In Zorach v. Clausen (1952), Justice William O. Douglas wrote, "We are a religious people whose institutions presuppose a Supreme Being" (p. 71). And in Abington School District v. Schempp (1963), Justice Tom C. Clark wrote, "[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities" (374 U.S. at 225; Hunt, 1969, p. 25). Furthermore, Justice Clark suggests, "America's pluralistic heritage and commitment demand that the curriculum include the objective study of religion. A person without knowledge of religion is a person whose education is woefully incomplete" (Lee, 1982, p. 12).

Hunt (1969, p. 26) also noted that the constitutional phrases forbidding passage of laws "respecting an establishment of religion, or prohibiting the free exercise thereof" does not forbid a teacher in a public school classroom from explaining the ritual of Mass, or reading a text, if the purpose is knowing more about one's neighbors. Lee (1982) observed that the armed forces have official chaplains with recognized military ranks, and their salaries are paid by the taxpayers. In addition, Lee asserted, the sessions of the

United States Supreme Court open with a prayer, and by law American currency must bear the words "In God We Trust" (p. 22).

In spite of the U.S. Supreme Court's decisions supporting the teaching about religion in public schools, the Supreme Court has held firm in rejecting the teaching of a particular religion in public schools (Bjorklun, 1988a; Collie, 1983; Elifson & Hadaway, 1985; Freund & Ulich, 1965; Haynes, 1992; Haynes, 1994; Klein, 1983; LaBrecque, 1983). For instance, in Everson v. Board of Education (1947) the Supreme Court declared that

> 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 to remain away from church against his [her] will or force him [her] to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance.... 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 [Thomas] Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State' (330 U.S. at 15-16).

The Supreme Court also acknowledges that "The [First] Amendment's purpose was not to strike merely at the official establishment of a single ... religion. It was to create a complete and permanent separation of the spheres of religious activity and civil authority to comprehensively forbidding [sic] every form of public aid or support for religion" (Wood, 1979, p. 68). For instance, the U.S. Supreme Court has ruled (1) that it is unconstitutional for public school to have released time in the school building, where a portion of each school day was set aside for religious instruction by representatives from various faiths, even though attendance in these classes might be on a voluntary basis, (2)

that it is unconstitutional for the state to sponsor a recitation of the Lord's prayer in public school, and (3) that it is unconstitutional for public school to practice devotional Bible reading in the classroom (Aquila & Petzke, 1994; Butts, 1950; Freund & Ulich, 1965; Griffiths, 1966; Kliebard, 1969; Weinstein, 1979). However, in Zorach v. Clausen (1952), the Supreme Court ruled that it is not unconstitutional for public school to have released time for religious instruction as long as the practice was maintained off the public school ground (343 U.S. at 309).

In summary, "The American public schools system has been called the supreme achievement of American democracy" (Wood, 1979, p. 64). "Every generation has to secure its own freedom where freedom is bought with a price, of which constant vigilance is a part" (Hunt, 1969, p. 26). Thus, "Freedom is one of those ideas, like justice in which there are no shades. There is simply no such thing as being 'almost free'" (Klein, 1983, p. 167). Consequently, "From the moment any liberty is taken away, the very concept of being free also evaporates " (p. 167). And so, "part of the normal life of the citizen of the United States is to work on the question of how public schools deal with religion—the never-[ending] business of a democracy" (Hunt, p. 26).

CHAPTER III

EXPLORATION OF SIGNIFICANT COURT CASES

I. Prayer in Public Schools

Significant cases discussed in this section include (1) Illinois ex rel. McCollum v. Board of Education (1948), (2) Zorach v. Clauson (1952), (3) Engel v. Vitale (1962), (4) Abington School District v. Schempp (1963), (5) Stone v. Graham (1980), and (6) Wallace v. Jaffree (1985). For an outline of the U.S. Supreme Court ruling on these significant cases and others in this investigation, please refer to Appendix B.

First, in Illinois ex rel. McCollum v. Board of Education (1948), the United States Supreme Court, hereafter referred to as the Supreme Court, ruled that it is unconstitutional for the state to use tax-supported public school buildings for the dissemination of religious doctrines during school hours and on the schools' grounds by various religious groups (333 U.S 203). The Supreme Court held that the School District of Champaign, Illinois, cannot take advantage of the state's compulsory education law by allowing different religious representatives from Catholic, Protestant, and Jewish faiths to conduct religious instruction in public school buildings once a week even though the program is on a voluntary basis (McCollum, 1948). For a clarification on the hierarchy of the federal court system, please refer to Appendix C.

In this instance, the Champaign Public Schools allowed students, whose parents wished them to be excused from their secular classes, to attend religious classes when given permission. However, those students who choose not to attend religious instruction were not allowed to leave the school building. The Supreme Court ruled the statute to be

in violation of the First Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment (McCollum, 1948).

Furthermore, Illinois passed a state compulsory education law requiring parents to send their children between the age of seven and sixteen to state-supported public schools where children were to remain in attendance during the hours when school was in session (McCollum, 1948). Failure to obey the law was considered a misdemeanor punishable by fine unless the parents can send their children to private or parochial schools that meet state standards. The U.S. Supreme Court concluded that using the school buildings and the state's compulsory education law to promote religious instruction in the public school classroom, the Champaign Board of Education was aiding or preferring one religion over another, and thus violated the Establishment Clause of the First Amendment (Aquila & Petzke, 1994; McCollum, 1948).

Second, in Zorach v. Clauson (1952), the U.S. Supreme Court ruled that permitting students to be absent from the public schools for religious observance and education did not violate the Establishment Clause and the Free Exercise Clause of the First Amendment of the U.S. Constitution (343 U.S. 306). The Supreme Court ruled that there is no evidence on the record to support a conclusion that the New York Education Law involves the use of coercion to get public school students into religious classroom.

In this case, the New York City School District permitted their public schools to release students during school hours with written permission from their parents to leave the school buildings and grounds to go to religious centers for instruction or devotional exercise (Zorach, 1952). Students who chose not to be excused stayed in the classroom

and continued with their study. Additionally, the churches would report to the public schools the names of students who failed to show up for religious instruction.

The Supreme Court stated that the "released time" program involved neither religious instruction in public school classrooms nor the expenditure of public funds. All costs including the application blanks, were paid by the religious organizations (Zorach, 1952, p. 309). Consequently, the Supreme Court concluded that the New York City Public Schools did nothing wrong by accommodating the students' schedules to a program of outside religious instruction and did not violate the Establishment Clause of the Constitution (Zorach, 1952).

Third, in Engel v. Vitale (1962), the U.S. Supreme Court ruled that state officials may not compose an official state prayer and require that prayer be recited in the public schools at the beginning of each school day, even if the prayer is denominationally neutral, and students can remain silent or be excused from the room while the prayer is being recited (420 U.S. 421).

The Supreme Court declared that it was unconstitutional for the Board of Education of Union Free School District No. 9, New Hyde Park, New York, to direct the school district principals to make students read a prayer aloud at the beginning of each class in the presence of a teacher at the beginning of each school day (Engel, 1962). The prayer read, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country" (p. 422).

The Supreme Court declared the First Amendment of the U.S. Constitution commands that "Congress shall make no law respecting an establishment of religion"—a

command which was "made applicable to the State of New York by the Fourteenth Amendment" (Engel, 1962, p. 423). The Supreme Court concluded

> We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity (Engel, p. 424).

In addition, the Supreme Court maintained that

> It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.... [Thus] a union of government and religion tends to destroy government and to degrade religion (Engel, pp. 427, 431).

Fourth, in Abington School District v. Schempp (1963), the Supreme Court ruled that it is unconstitutional for a state to prescribe silent Bible reading or the recitation of the Lord's Prayer in the classroom (374 U.S. 203). The Supreme Court concluded,

> The Commonwealth of Pennsylvania had no constitutional right when it required that "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such bible reading, upon the written request of his [her] parent or guardian (Abington, 1963, p. 205).

In this case, the Schempp family and their two children brought suit to enjoin or to forbid the state from enforcing its statute, contending that their rights under the Fourteenth Amendment of the U.S. Constitution are, have been, and will continue to be violated unless the state's statute be declared unconstitutional as violation of the First Amendment's provisions (Abington, 1963). The Pennsylvania law required that on each school day from 8:15 to 8:30 A.M. students select ten verses from any Bible such as the King James, the Douay, the Revised Standard, or the Jewish Holy Scripture, and read

silent, without comment, prefatory statement, no questions asked or explanation made, and without interpretation given at or during the exercise (Abington, 1963). In addition, these students and parents were informed that the students may be absent from the classroom or not participate in the exercises (Abington, 1963). Nevertheless, the Supreme Court stated,

> The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observances. The devotional and religious nature of the morning exercises is made all the more apparent that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. Additionally, the fact that some pupils, or theoretically all pupils might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony.... (Abington, pp. 210-211).

Fifth, in Stone v. Graham (1980), the U.S. Supreme Court declared that the Kentucky statute requiring the posting of a copy of the Ten Commandments, even purchased with private contributions, on the wall of each public school classroom in the State is unconstitutional and violates the Establishment Clause of the First Amendment (449 U.S. 39).

The Supreme Court held that the statute has no secular purpose even when a notation in small print is printed at the bottom of each display stating, "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western civilization and the Common Law of the United States" (Stone, 1980, p. 41). The Supreme Court suggested that such an "avowed" secular purpose is not sufficient to avoid conflict with the First Amendment, for the posting serves no constitutional educational function. Moreover, the Supreme Court refuted the claim that the posted copies were financed by voluntary private contributions as immaterial, and

that it did not matter whether the Ten Commandments were merely posted rather than read aloud because such practices served to encroach on the First Amendment (Stone, p. 39).

The Supreme Court also compared this ruling to the one ruled in Abington v. Schempp in 1963 when it declared that the Common Wealth of Pennsylvania cannot make the students voluntarily choose any ten verses from any of the Christian Bible to be read at the start of each school day despite the State's assertion that such statute served "the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature" (Abington, 1963, p. 41). As a result, the Supreme Court stated,

> The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature ... The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and that no legislative recitation of a supposed secular purpose can blind us to that fact .... That the mere posting of the copies under the auspices of the legislature provides the 'official support of the State..." (Stone, 1980, pp. 41, 42)

Last, in Wallace v. Jaffree (1985), the United States Supreme Court ruled that it was unconstitutional for the state of Alabama to authorize a daily moment of silence for meditation or voluntary prayer in public schools (105 S. Ct. 2479). The Supreme Court stated that such statute was an endorsement of religion lacking any clearly secular purpose, and thus was a law respecting the establishment of religion in violation of the First Amendment (Wallace, 1985).

The Alabama statute stated,

> 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 each class is held may announce that a period of silence not to excess one minute in duration shall be

> observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in (Wallace, 1985, p. 2481).

In addition, the statute mandated that a moment of silence was "for meditation or voluntary prayer" and the prayer read,

> 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 (Wallace, p. 2481).

In deciding Wallace, the Supreme Court asserted that the Alabama statute was intended to convey a message of state approval of prayer activities in the public schools—making it unnecessary, and indeed inappropriate, to evaluate the practical significance of the addition of the words "or voluntary prayer" to the statute (Wallace, p. 2492). Furthermore, the Supreme Court cited, "The First Amendment was adapted to curtail power of Congress to interfere with individual's freedom to believe, to worship, and to express himself [sic] in accordance with the dictates of his conscience" (p. 2485). The Supreme Court noted, "The record here not only establishes that the statute's purpose was to endorse religion, it also reveals that the enactment of the statute was not motivated by any clearly secular purpose" (p. 2480). The Supreme Court concluded, "The Statute is a law respecting the establishment of religion," and thus "violates the First Amendment" (p. 2480).

II. Teaching of Evolution versus Creation in Public Schools

Significant cases discussed in this section include (1) Scopes v. State (1925), (2) Epperson v. Arkansas (1968), (3) McLean v. Arkansas Board of Education (1982), (4) Aguillard v. Treen (1985), and (5) Edwards v. Aguillard (1987).

John T. Scopes v. State of Tennessee (1925/1927) is best known and remembered for its sensational and highly publicized trial between two lawyers: William Jennings Bryan representing the plaintiff, Tennessee; and Clarence Darrow representing the defendant, John T. Scopes (Duker, 1971). The issue was whether or not a public school teacher may be prohibited from teaching certain ideas, concepts, and information forbidden by the state (Bjorklun, 1988b). In this case, the Tennessee legislature enacted the Butler Bill, making it a crime for public school teachers, "to teach any theory that denies the story of the Divine Creation of man [sic] as taught in the Bible, and to teach instead that man has descended from a lower order of animals" (Unger, 1996, p. 196; Epperson v. Arkansas, 393 U.S. at 108, 1968). New American Bible accounts Divine Creation as

> In the beginning, when God created the heavens and the earth, the earth was a formless wasteland, and darkness covered the abyss, while a mighty wind swept over the waters....
>
> Then God said; "Let us make man in our image, after our likeness. Let them have dominion over the fish of the sea, the birds of the air, and the cattle, and over all the wild animals and all the creatures that crawl on the ground. [thus] God created man in his image; in the divine image he created them.
>
> Thus the heavens and the earth and all their array were completed ...on the seventh day [God] had been doing, he rested on the seventh day from all the work he had undertaken (1986, Genesis 1:1-2:2).

In contrast, Campbell (1993, p. 420) describes Evolution or Darwinian Theory as

> [T]he processes that have transformed life on Earth from its earliest forms to the vast diversity that characterize it today.
>
> Evolution, according to Darwin, includes a great diversity of organisms, their similarities and difference, their origins and relationship, their geographical distribution, and their adaptations to the surrounding environment.

> To Darwin, evolution holds that (1) species were not specially created in their present forms but had evolved from ancestral species, and (2) a population of organisms can change over time as a result of individuals with certain heritable traits leaving more offspring than other individuals.

The Scopes trial began in 1925 in the Tennessee state trial court and ended in 1927 in the state supreme court when a Tennessee high school science teacher, John T. Scopes, defied the Butler statute and taught the theory of evolution as the origin of human existence in his science class. By violating the statute, Scopes was tried, convicted, and fined $100.00. However, the ruling was overturned by the Tennessee Supreme Court on a technicality that the fine should have been assessed by the jury rather than by the judge (Bjorklun, 1988b; Epperson, 1968). The Tennessee Supreme Court further requested that in the interest of the "peace and dignity of the State" that the case not be retried (Duker, 1971, p. 123). For a clarification on the hierarchy of the state court system, please refer to Appendix D.

Similarly, in Epperson v. Arkansas (1968), the Arkansas state legislature enacted a similar law to the one in Tennessee in 1928 (Bjorklun, 1988b). The Arkansas statute made it unlawful for any teacher in the state "to teach the theory or doctrine that mankind [sic] ascended or descended from a lower order of animals" or "to adopt or use in any institution a textbook that teaches" this theory—the theory of evolution (Epperson, 1968, pp. 98-99; Bjorklun, 1988b, p. 193). Violation of the statute was a misdemeanor and grounds for dismissal from the job (Bjorklun, 1988b; Epperson, 1968).

Epperson v. Arkansas began in the 1965-1966 school year when the biology teachers in the Little Rock school system recommended the adoption and use of a textbook that contained a chapter explaining the Darwinian Evolutionary Theory

(Epperson, p. 99). Following the biology teachers' recommendation, the administration at Central High School accepted the recommendation and adoption of the textbook for use in the school's biology classes, recognizing that prior science textbooks did not contain this controversial subjects (Bjorklun, 1988b).

Susan Epperson, then a second-year biology teacher in the 1965-1966 school year with a master's degree in zoology, became concerned because she was required to use the new textbook. However, to do so was in violation of state law, a criminal offense, and grounds for dismissal from her job (Bjorklun, 1988b). As a result, Epperson felt she had no choice but to file for a declaratory and injunctive relief challenging the constitutionality of Arkansas' "anti-evolution" statute (Epperson, 1968).

The U.S. Supreme Court ruled that it was unconstitutional for Arkansas to impose such restriction on the teacher because the statute violates the Fourteenth Amendment, which embraces the First Amendment's prohibition of state laws respecting an establishment of religion (Epperson, 1968). The Supreme Court declared, "There can be no doubt that Arkansas has sought to prevent its teachers from discussing the theory of evolution because it is contrary to the belief of ... the Book of Genesis ... on the origin of man" (p. 107). The Supreme Court further stated, "The First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma" (p. 106). The Supreme Court cited Everson v. Board of Education in stating, "Neither [a State nor the Federal Government] can pass laws which aid one religion, aid all religions, or prefer one religion over another" (p. 106). The Supreme Court concluded,

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion (Epperson, 1968, pp. 103-104).

Following the Supreme Court's rulings in Scopes and Epperson that forbade the states from prohibiting the teaching of the theory of evolution in the classrooms, other states such as Arkansas, Tennessee, and Louisiana began to implement "equal time" for the teaching of the theory of creation.

In McLean v. Arkansas (1983), the Arkansas legislature signed into law a Balanced Treatment for Creation-Science and Evolution-Science Act, also known as Act 590 (723 F. 2d 45). The Act was signed on March 1981 and stated "Public Schools within this State [Arkansas] shall give balanced treatment to creation-science and to evolution-science" (Bjorklun, 1988b, p. 195). Shortly thereafter, a suit was brought against the Arkansas Board of Education by Reverend Bill McLean, Bishop Ken Hicks, the Union of American Hebrew Congregations, the National Association of Biology Teachers, the Arkansas Education Association, and others contending that the statute violated the Establishment Clause of the First Amendment (McLean, 1982).

In reaching the decision, the Eighth Circuit United States Court of Appeals used the three-pronged test derived from Lemon v. Kurtzman in 1971. Specifically, the Lemon test stated that (1) a law must have a secular purpose, (2) that its primary effect neither advances nor inhibits religion, and (3) that it does not create an excessive entanglement of government and religion (Bjorklun, 1988b). If any of the three-part test fails, then the law respecting the Establishment Clause also fails (Bjorklun, 1988b). For a

clarification on the circuit of the United States court of appeals, please refer to Appendix E.

The Eighth Circuit U.S. Court of Appeals found that the Arkansas statute, Act 590, failed the first prong because the Act's purpose was "simply and purely an effort to introduce the biblical version of creation into the public school curriculum" (Bjorklun, 1988b, p. 195). Additionally, the Eighth Circuit Court rejected the defendants' contention that "creation science" is a science (p. 195). The Eighth Circuit Court stated,

> The evidence establishes that the definition of "creation-science" has as its unmentioned reference the first eleven chapters of the Book of Genesis. The concepts are the literal Fundamentalists' view of Genesis (Bjorklun, 1988b, pp. 195-196).

The Eighth Circuit U.S. Court of Appeals concluded that "since creation-science is not science, the conclusion is inescapable that the only real effect of Act 590 is the advancement of religion" (Bjorklun, 1988b, p. 196). The Eighth Circuit U.S. Court of Appeals then ruled that the Arkansas Balanced Treatment Act violated the Establishment Clause of the First Amendment of the U.S. Constitution. Furthermore, the Eight Circuit Court permanently enjoined the Arkansas Board of Education from enforcing the Act (McLean, 1983).

The Tennessee legislature also enacted a Balanced Treatment Act similar to the one in Arkansas, requiring that whenever any textbook discusses evolutionary theory of the origin of human beings, it must also give the same attention to the theory of creation as held in the Bible (Bjorklun, 1988b).

In 1975, the Sixth Circuit U.S. Court of Appeals found the Tennessee Balanced Treatment Act violated the Establishment Clause of the First Amendment of the U.S.

Constitution (Bjorklun, 1988b). The Sixth Circuit U.S. Court of Appeals declared the Act gives a "clearly defined preferential position for the biblical version of creation as opposed to any account of the development of man [sic] based on scientific research and reasoning" (p. 194).

The Sixth Circuit U.S. Court of Appeals explained, "The problem with the Tennessee statute was that it tried to equate the Genesis creation account with that as 'scientific' as the theory of evolution" (Bjorklun, 1988b, p. 195). Furthermore, the Sixth Circuit U.S. Court of Appeals asserted that it was deceiving for religious fundamentalist organizations to promote the idea that the Genesis account is supported by scientific data, and to use the term "creation science" and "scientific creationism" to give the appearance of more legitimacy to the theory of evolution (p. 195).

In a like manner, in Aguillard v. Treen, Governor of Louisiana (1985/1987), the Louisiana legislature passed the "Balanced-Treatment for Creation-Science and Evolution-Science in Public School Instruction" Act in 1981 (634 F. Supp. 426, 1985). The Act mandated that a

> [B]alanced treatment to creation-science and evolution-science shall be given in classroom lectures.... And in other educational programs in public schools, to the extent that such lectures, textbooks, library materials, or educational programs deal in any way with the subject of the origin of man, life, the earth, or the universe.
>
> No school is required to give any instruction in the "subject of origin," but if a school chooses to teach about either evolution-science or creation-science, it must teach both, and it must give each balanced treatment....(Aguillard, pp. 426, 427).

The suit was filed in January 1985 by Don Aguillard along with a group of Louisiana educators, religious leaders, and parents of children in public schools

challenging the constitutionality of the Balanced Act (Aguillard, 1985). Subsequently, a Federal District Court Judge Adrian Duplantier granted the plaintiffs, Don Aguillard et al., a motion for summary judgment. In granting the summary judgment, Judge Duplantier, in essence, denied Governor Treen's request for a trial on the First Amendment issues, declaring there was no need for a trial because "whatever the evidence would be, it could not affect the outcome" (Bjorklun, 1988b, p. 196). Judge Duplantier further stated, "We decline to put the people of Louisiana to the very considerable needless expense (including fees of attorneys on both sides) of a protracted trial" (Aguillard, p. 427; Bjorklun, 1988b, p. 196). Judge Duplantier held that "the sole reason why the Louisiana legislature would require the teaching of creationism is that it comports with the same religious doctrine" (Bjorklun, 1988b, p. 196). The judge concluded that the statute's primary effect "promotes the beliefs of some theistic sects to the detriment of others," and, therefore, "violates the fundamental First Amendment principle that a state must be neutral in its treatment of religion" (Aguillard, p. 426; Bjorklun, 1988b, p. 196).

Governor Treen appealed Judge Duplantier's ruling and, in July 1985, the Fifth Circuit U.S. Court of Appeals affirmed Judge's Duplantier's decision, declaring

> In truth, notwithstanding the supposed complexities of religion-versus-state issues and the lively debates they generate, this particular case is a simple one, subject to simple disposal: The Act violates the Establishment Clause of the First Amendment because the purpose of the statute is to promote a religious belief (Bjorklun, 1988b, pp. 196-197).

The Fifth Circuit U.S. Court of Appeals declared the Louisiana statute violated the Establishment Clause because the Act's "intended effect was to discredit evolution by

counterbalancing its teaching at every turn with the teaching of creationism, a religious belief" (Edwards v. Aguillard, 482 U.S. at 582, 1987), and "the state may not constitutionally prohibit the teaching of evolution in the public schools, for there can be no non-religious reason for such a prohibition" (Aguillard, 1985, p. 428).

Following the Fifth Circuit U.S. Court of Appeals' decision, Governor Treen appealed the decision to the U.S. Supreme Court and the Supreme Court granted a certiorari, an order to hear appeal from the lower court. In June 1987, the U.S. Supreme Court affirmed the Fifth Circuit U.S. Court of Appeals's decision in what then became Edwards, Governor of Louisiana, v. Aguillard (1985/1987). The Supreme Court ruled

> The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind.... The Act's primary purpose was to change the public school science curriculum to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. Thus, the act is designed either to promote the theory of creation science that embodies a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects. In either case, the act violates the First Amendment (Edwards, 1987, pp. 578).

Additionally, the U.S. Supreme Court countered Edwards's claim that the Act served to protect academic freedom. In citing the Fifth Circuit U.S. Court of Appeals's reasoning, the Supreme Court agreed, "[T]he statute's avowed purpose of protecting academic freedom was inconsistent with requiring ... the teaching of creation science whenever evolution is taught" (Edwards, p. 582). The Supreme Court found the Louisiana Legislature's intent was "to discredit evolution by counterbalancing its teaching at every turn with the teaching of creationism, a religious belief" (p. 582). The Supreme Court further stated that

> [T]he goal of basic "fairness" is hardly furthered by the Act's discriminatory preference for the teaching of creation science and against the teaching of evolution.... By requiring that curriculum guides be developed and resource services supplied for teaching creationism but not for teaching evolution, by limiting membership on the resource services panel to "creation scientists," and by forbidding school boards to discriminate against anyone who "chooses to be a creation-scientist" or to teach creation science, while failing to protect those who choose to teach other theories or who refuse to teach creation science (Edwards, pp. 588, 578)

III. Religious Ceremony at Public Schools Graduation

Significant cases discussed in this section include (1) Graham v. Central Community School District of Decatur (1985), and (2) Lee v. Weisman (1992).

In Graham v. Central Community School District of Decatur (1985), the United States District Court ruled the defendant's, Central Community School District of Decatur's, inclusion of a religious invocation and benediction as part of its graduating ceremonies had violated the Establishment Clause of the First Amendment of the U.S. Constitution (608 F. Supp. 531). The Supreme Court ordered the defendant be enjoined from including any invocation and benediction in its graduating ceremonies and future graduating ceremonies be free from any religious invocation, benediction, or both (Graham, 1985).

The case began when Robert Graham—a resident of Leon, Iowa, and the father of Rebecca Graham, a graduating senior at Central Decatur High School—filed suit against the Central Community School District of Decatur County forbidding the High School from performing a religious ceremony at Rebecca's graduation. Robert and his wife, Sharon, planned to attend their daughter's graduation ceremony, but they did not want to participate in the school's prayer. However, Central Community School District of

Decatur County, for the past 20 years, opened with an invocation prayer by a Christian minister and closed with the minister's benediction (Graham, 1985). Moreover, the minister was not paid for his service and he had complete control of what he said, in accordance with his conscience, during the invocation and benediction. The invocation was usually no more than two to three minutes long, and the benediction was usually less than a minute. The entire commencement exercise lasted anywhere from sixty to ninety minutes (Graham, 1985).

According to three expert witnesses who testified for the plaintiff, Robert Graham, all three held that invocations and benedictions at commencement exercises served a religious purpose, not a secular one as claimed by the defendant (Graham, 1985). Furthermore, all three agreed that a public school offering an invocation and benediction at public events, such as commencement exercises, was advocating religion (Graham, 1985). For example, one of the three witnesses, a Unitarian Universalist minister, testified that he is not a Christian and is personally offended by the offering of Christian prayers at a public school function (Graham, 1985). Similarly, Robert Graham, daughter, Rebecca, and wife, Sharon, who are Unitarian Universalists, testified that they are offended by the practice of Christian prayers at public school functions including commencement exercises. They testified that they felt "ostracized and separated," and that they viewed the practice as promotion of religion by the school (Graham, 1985, p. 534).

On the contrary, one of the two witnesses for the defendant—Virginia Webb, a member of the defendant's board of directors—testified that she had no opinion as to the

purpose of the invocation and benediction at commencement exercises. Moreover, she testified that the school had always performed this procedure (Graham, 1985). The other witness for the defendant—Thomas Spear, the school's superintendent—testified that the first purpose of having an invocation and benediction in the commencement exercises is "tradition" (Graham, 1985, p. 534). Spear stated he believes it lends to the ceremony a "serious note" (Graham, p. 534). The Superintendent also testified that in his opinion the invocation and benediction serve a religious purpose (Graham, 1985).

After listening to both sides of the argument, the United States District Court concluded, "The invocation and benediction portions of defendant's commencement exercises serve a Christian religious purpose, not secular purposes" (Graham, p. 535). The U.S. District Court added

> 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....
>
> 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 (Graham, 1985, pp. 535-536).

In Lee v. Weisman (1992), the U.S. Supreme Court ruled that the city of Providence, Rhode Island, could not provide for "nonsectarian" prayer to be given by clergyman selected by the school (112 S. Ct. 2649). The Supreme Court held that a public school's offering of prayer at graduation ceremony constituted government involvement prohibited by the Establishment Clause of the First Amendment (Weisman, 1992; Aquila & Petzke, 1994).

In Weisman, the City of Providence permitted school principals in the public school system to invite members of the clergy to offer invocation and benediction prayers as part of the formal graduation ceremonies for middle school and for high school students. However, participation in the ceremony was on a voluntary basis. Lee, the principal at Nathan Bishop Middle School where Deborah Weisman attended, invited a rabbi to perform the students' graduation ceremony. Deborah and her father, Daniel Weisman, objected and filed suit seeking permanent injunction—an order granted by the higher court after a final hearing on the merits of the facts and rules of law—in the U.S. District Court against the inclusion of the invocations and benedictions in the ceremony (Weisman, 1992).

The Invocation read

> God of the Free, Hope of the Brave:
> For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.
> For the liberty of America, we thank You. May these new graduates grow up to guard it.
> For the political process of America in which all its citizens may participate, for its court system where all may seek justice we thank You. May those we honor this morning always turn to it in trust.
> For the destiny of America we thank You. May the graduates of Nathan Bishop Middle School so lie that they might help to share it.
> May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.
> Amen (Weisman, pp. 2652-2653).

Similarly, the Benediction read

> O God, we are grateful to You for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.
> Happy families give thanks for seeing their children achieve an important milestone. Send Your blessings upon the teachers and administrators who helped prepare them.

> The Graduates now need strength and guidance for the future, help them to understand that we are not complete with academic knowledge alone. We must each strive to fulfill what You require of us all: To do justly, to love mercy, to walk humbly.
> We give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion.
> Amen (Weisman, 1992, p. 2653).

Justice Anthony Kennedy, in delivering the Supreme Court's majority opinion, affirmed that

> The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause ... at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which "establishes a [state] religion or religious faith, or tends to do so" (Weisman, p. 2655).

In addition, to counter the opposing claim that Deborah could elect not to attend commencement exercises without renouncing her diploma, Justice Kennedy wrote

> Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions.... Attendance may not be required by official decree, yet it is apparent that a student is not free to absent herself from the graduation exercise in any real sense of the term "voluntary," for absence would require forfeiture of those intangible benefits which have motivated the student through youth and all her high school years. Graduation is a time for family and those closest to the student to celebrate success and express mutual wishes of gratitude and respect, all to the end of impressing upon the young person the role that it is his or her right and duty to assume in the community and all of its diverse parts (p. 2659).

The U.S. Supreme Court thus concluded, "[I]n our culture, standing or remaining silent can signify adherence to a view or simple respect for the views of others" (Weisman, 1992, p. 2658); and, "The inclusion of 'nonsectarian' prayer in the public school's graduation ceremony constituted an impermissible establishment of religion violating the Establishment Clause" of the U.S. Constitution (p. 2650).

IV. Public School Facilities for Religious Use

Significant cases discussed in this section include (1) Resnick v. East Brunswick Township Board of Education (1978), (2) Board of Education of the Westside Community Schools v. Mergens (1990), and (3) Lamb's Chapel v. Center Moriches Union School District (1993).

In Resnick v. East Brunswick Township Board of Education (1978), the New Jersey Supreme Court ruled a religious group's temporary use of public school facilities, at a rental rate reflecting the costs incurred by the school due to such use, does not violate the Establishment Clause of the U.S. Constitution (389 A. 2d 944).

The controversy involved in this case was whether East Brunswick public school facilities may be used for religious instruction and services when these facilities are not being used for regular educational purposes (Resnick, 1978). East Brunswick's Statement of Philosophy stated, in part,

> It is the feeling of this Board of Education that each of the East Brunswick Public Schools, build [sic] and maintained through the expenditure of public funds, should be utilized to the fullest extent possible by East Brunswick community groups and agencies.... A rental is assessed which approximates the cost of janitorial services is required in conjunction with the use of school premises.... (Resnick, p. 944).

Abraham Resnick, a high school student, filed suit on October 1974 to enjoin the East Brunswick School Board from using the school facilities for religious groups, alleging the use of the public school facilities by religious groups violated the Establishment Clause of both federal and state constitutions (Aquila & Petzke, 1994). The State Superior Court and the State Court of Appeal agreed, holding for Resnick that

the use of public school facilities was unconstitutional. The New Jersey Supreme Court agreed to hear the case (Aquila & Petzke, 1994).

The New Jersey Supreme Court ruled that the processing of applications submitted by religious groups to the East Brunswick School Board did not amount to the kind of excessive entanglement of church and state prohibited by the Establishment Clause (Aquila & Petzke, 1994). The New Jersey Supreme Court ruled that when the Establishment Clause and the Free Exercise Clause of the Constitution are in conflict with one another, the Free Exercise Clause must take priority (Aquila & Petzke, 1994. The New Jersey Supreme Court further stated, "The First Amendment requires strict neutrality with respect to religion ... the policy at issue allowing the use of public school facilities with reimbursement of cost, does not violate that neutrality test" (Aquila & Petzke, 1994, p. 6.9).

The New Jersey Supreme Court also declared the use of public schools on a temporary basis by religious groups is a long-standing tradition in New Jersey. That in East Brunswick Township itself, the use of public school buildings for religious services and meetings was common in the Nineteenth Century (Resnick, 1978). The New Jersey Supreme Court affirmed, "Since the practice of having worship services in schoolhouses was not uncommon in the years preceding 1913, it may be reasonably presumed that the absence of an express declaration to the contrary is strong evidence that the Legislature did not intend to prohibit this long-standing practice [of renting public school facilities when not in use to different religious organizations fairly]" (p. 953). The New Jersey Supreme Court noted

> The use of the schools by these religious groups was on the same terms and at the same rates as for the other non-profit groups. Nothing in the record indicates that the religious groups' use of facilities was so time consuming as to effectively prevent other groups from the use and enjoyment of the schools at non-instructional times (Resnick, 1978, pp. 953-954).

Thus, the New Jersey Supreme Court reversed the State Superior Court and the State Court of Appeal's decisions, and concluded that there was no statutory bar to religious services or instruction being carried out in public schools during periods where those facilities are not required for regular educational activities (Aquila & Petzke, 1994; Resnick, 1978).

In addition, in Board of Education of the Westside Community Schools v. Mergens (1990), the United States Supreme Court ruled, "The Equal Access Act, at least on its face and as applied to Westside, did not have the primary effect of advancing religion," and, therefore, "did not violate the Establishment Clause" of the First Amendment of the U.S. Constitution (496 U.S. at 252, 253).

The Equal Access Act stated,

> It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings (Westside, p. 235)

The case started in January 1985 when Bridget Mergens, then a Westside High School student in Omaha, Nebraska, met with the School's principal, Dr. James Findley for permission to form a Christian club at the school (Westside, 1990). According to Mergens's testimony, the club's purpose was to permit the students to read and discuss the Bible, to have fellowship, and to pray together (Westside, 1990). Membership in the

club would be on a voluntary basis and open to all students regardless of the students' religious affiliation. In addition, the club was to have the same privileges and meet on the same terms and conditions as other Westside clubs like the Choir club, Speech and Debate club, or the Orchestra club (Westside, 1990). However, Mergens' Bible club would not have a faculty sponsor like other clubs in the school.

Thus, in February 1985, Mergens' request was declined by Dr. Findley and James Tangdell, the school district assistance superintendent, for the reason that all student clubs were required to have a faculty sponsor and that even if the Bible club was granted one, it would violate the Establishment Clause of the First Amendment of the U.S. Constitution (Westside, 1990). Subsequently, Mergens brought suit alleging that Westside had violated the Equal Access Act. However, the U.S. District Court for the District of Nebraska ruled in favor of Westside and held that "The Act did not apply in this case because Westside did not have a 'limited open forum' as defined by the Act" (p. 233). Mergens appealed the ruling to the Eighth Circuit U.S. Court of Appeals, which overturned the District Court's ruling. Westside then appealed to the U.S. Supreme Court.

The U.S. Supreme Court ruled in favor of Mergens, declaring that since Westside High School receives federal financial assistance and is a public secondary school with one or more "noncurriculum related student groups," therefore the School does have a "limited open forum" (Westside, 1990, p. 237). The Supreme Court declared that a "limited open forum" exists whenever a public secondary school "grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school

premises during noninstructional time" (p. 235). Thus, if one club, for example, a chess club is allowed to use the public school facilities before or after school, or both, then other clubs such as homosexual, unwed mothers, Satanists, neo-Nazis, or Communists would have equal access to use the school facilities as well (Aquila & Petzke, 1994; Commons & Rodriguez, 1990).

The Equal Access Act further prohibits any public secondary schools with a "limited open forum" from discriminating against students who wish to open a school club on the basis of their religion, political, philosophical, or other free speech expressions (Westside, 1990, p. 235). The Act specifies that a school

> 'shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum' if the school uniformly provides that the meetings are voluntary and student-initiated; are not sponsored by the school, the government, or its agents or employees; do not materially and substantially interfere with the orderly conduct of educational activities within the school; and are not directed, controlled, conducted, or regularly attended by 'nonschool persons' (Westside, p. 236).

Thus, the U.S. Supreme Court declared that the Equal Access Act creates little risk of government endorsement, coercion, or excessive entanglement toward a particular religion because it prohibits faculty participation in the meetings (Aquila & Petzke, 1994). And since the Act satisfies all three prongs of the neutrality test established in Lemon v. Kurtzman in 1971, the Supreme Court declared Equal Access Act constitutional (Aquila & Petzke, 1994). The Supreme Court concluded

> Although a school may not itself lead or direct a religious club, a school that permits a student-initiated and student-led religious club to meet after school, just as it permits any other student group to do, does not convey a message of state approval or endorsement of the particular religion.... An open-forum policy including nondiscrimination against religious speech would have a secular purpose (Westside, pp. 252, 248).

In Lamb's Chapel v. Center Moriches Union Free School District (1993), the United States Supreme Court ruled that denying church access to school premises, for religious purposes of showing and viewing a film dealing with family and childrearing issues faced by parents today, was unconstitutional and violated the Freedom of Speech Clause of the First Amendment made applicable to the states by the Fourteenth Amendment (508 U.S. 384; Aquila & Petzke, 1994).

Lamb's Chapel began when the Center Moriches Union Free School District was authorized under New York Education Law, section 414, to adopt reasonable regulations for the after-hours use of public school property for ten specified purposes, not including meetings for religious purposes when the property was not in use for school purposes. These permitted uses of school property included the holding of social, civic, and recreational meetings and entertainment, uses pertaining to the welfare of the community, and uses that had to be nonexclusive and open to the general public (Rule 10). However, the list of permitted uses excluded Rule 7, which was meeting for religious purposes (Aquila & Petzke, 1994, S (Supplement) 10; Lamb's Chapel, 1993).

Lamb's Chapel, an evangelical church in the community of Center Moriches Union Free School District, applied twice to the School District for permission to use school facilities to show a six-part film series containing lectures by Dr. James Dobson, a licensed psychologist, former associate clinical professor of pediatrics at the University of Southern California, best-selling author, and radio commentator (Lamb's Chapel, 1993). The brochure stated, "The film series would discuss Dr. Dobson's views on the undermining influences of the media that could only be counterbalanced by returning to

traditional, Christian family values instilled at an early stage" (p. 388). However, the Union Free School District denied Lamb's Chapel's application, stating, "This film does appear to be church related and therefore your request must be refused" (Aquila & Petzke, 1994, p. S10; Lamb's Chapel, 1993, p. 389).

A second application by Lamb's Chapel for permission to use school premises for the showing of a film was described as a "family-oriented movie from the Christian perspective" (Lamb's Chapel, p. 389). This request was also denied using identical language by the Center Moriches School District (Aquila & Petzke, 1994). Subsequently, Lamb's Chapel brought suit in district court, challenging the denial as a violation of the Freedom of Speech and Assembly Clauses, the Free Exercise Clause, and the Establishment Clause of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment (Aquila & Petzke, 1994).

The Supreme Court held that the Center Moriches School District's refusal to allow Lamb's Chapel to use its public school facilities for film showing and viewing, while allowing others in the community to use such facilities, violated the First Amendment freedom of speech (Lamb' Chapel, 1993). The Supreme Court stated,

> There is no suggestion from the courts below or from the District or the State that a lecture or film about child rearing and family values would not be a use for social or civic purpose otherwise permitted by Rule 10. That subject matter is not the District has placed off limits to any and all speakers. Nor is there any indication in the record before us that the application to exhibit the particular film series involved here was, or would have been, denied for any reason other than the fact that the presentation would have been from a religious perspective (Lamb's Chapel, pp. 393-394).

CHAPTER IV

SUMMARIES AND IMPLICATIONS

Research of pertinent court documents show clear patterns in decisions about public school and religion in the United States. According to Supreme Court's rulings, it is against the United States Constitution for states to use tax-supported public school buildings and facilities to support religious studies on school grounds and in classrooms. The United States Supreme Court interprets this as states trying to support a particular religion in the public school, which is against the First Amendment's Establishment Clause prohibiting states from establishing or supporting a religion. In addition, the U.S. Supreme Court sees the use of public school facilities to teach religious principles and beliefs as the states' attempt to take advantage of the compulsory education law which requires all students to attend public or private schools until a certain age is reached. For example, in the case of Illinois ex. rel. McCollum v. Board of Education (1948), the age was sixteen (333 U.S. 203). Hence, if the states allow public schools to have religious instructions in the classrooms, this would create unfair competition for religions which do not have either the human or the economic resources to compete with more structured and wealthy religious groups.

In addition, despite the fact that Christian denominations are dominant in America, no person can force religious principles and beliefs on another person because religious freedom is guaranteed to individuals by the First Amendment's Free Exercise Clause. The Free Exercise Clause serves a very important foundation in American society. This Clause gives every American the freedom to express his or her deepest

thoughts, beliefs, and religious practices and rituals without being concerned about whether an action conforms to the majority of the population.

The significance of the Fourteenth Amendment of the U.S. Constitution, enacted by the U.S. Congress in 1868, makes the First Amendment applicable to all states (Weinstein, 1979). The Fourteenth Amendment guarantees all citizens of the United States, born or otherwise naturalized, due process of law and the right to "Life, Liberty, and the pursuit of Happiness ..." (Klein, 1983, p. 168). Thus, if a person is charged with a crime, he or she in entitled to a legal representation in the court of law and be judged innocent until proven guilty as stated in the Sixth Amendment of the U.S. Constitution (Commager, 1968); or that "No person shall be held to be a witness to himself or herself in a crime [self-incrimination] or be tried twice for the same offense [double-jeopardy]" as stated in the Fifth Amendment of the U.S. Constitution (p. 146). The First Amendment states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..." (Hunt, 1969, p. 26). Consequently, with the passage of the Fourteenth Amendment in 1868, it applied the Free Exercise Clause and the Establishment Clause of the First Amendment to all states. This created a wave of court litigation involving one's freedom to express his or her sincerely held religious beliefs and strengthened the public schools' prohibition against supporting a particular religion.

It is not against the U.S. Constitution for states to allow public schools to release students from classrooms during the school day for religious observances and religious study, so long as these activities are conducted off school grounds and facilities. In

accordance with the Supreme Court's interpretation, no state funds may be used in the advancement of any particular religion, and since no students are forced to leave school grounds to participate in religious learning, the state does not violate the Establishment Clause and the Free Exercise Clause of the First Amendment. It is important to recognize how the U.S. Supreme Court has differentiated between "on school" versus "off school" religious instruction. For example, in McCollum v. Board of Education (1948), the U.S. Supreme Court ruled that it was unconstitutional for public schools to have religious instruction on school grounds. However, in Zorach v. Clauson (1952), the Supreme Court ruled that it was not unconstitutional for public schools to release students during school hours for religious instruction off school grounds.

In Zorach, the Supreme Court's ruling allows students to leave school grounds on the condition that students who miss classes must make up the work. The Supreme Court asserts that it is not unconstitutional for public schools to accommodate a student's religious learning as long as no state money is involved and other students' religious rights are not infringed upon. In addition, because public schools expend no taxed moneys to accommodate students' desire to learn more about their own religious beliefs, public schools are not violating the Establishment Clause of the First Amendment of the U.S. Constitution.

Equally important, school officials cannot coerce students with subtle religious reference into accepting any religious ideas and beliefs that are contrary to their own religious principles and beliefs. Once public schools allow any religion to be a part of the school curriculum, it is possible that other religions will likely be left out due to low

membership within the community or a lack of financial resources, or both. People from some religious denominations may not be able to persuade school board members to support their view of religion in the classroom. In addition, it is inevitable that some students and parents will be offended for such reasons as (1) some students and their parents believe in one religion, (2) some believe in other religions, (3) some believe in no religion, and (4) some are in between (Loconte, 1996).

Research documents note state prayers composed by state legislatures and school administrators are unconstitutional. This is true regardless of whether the prayer is (1) denominationally neutral, (2) read silently or aloud, (3) voluntary or involuntary, and (4) students choose to be present or absent from the exercise (Abington v. Schempp, 1963). State officials, teachers, school board members, and school administrators cannot be neutral in composing the state's prayer because these school officials are more than likely to compromise their objectivity in trying to move their religious beliefs forward. Consequently, this would lead to infringement of student's freedom to religious expression guaranteed by the First Amendment. In addition, prayer in public schools violates the Establishment Clause of the First Amendment which forbids public schools from establishing or supporting one religion, some religion, or all religions. Therefore, the line between religion and public schools must be respected by not allowing religious prayer in public school classrooms.

It is evident that whenever public schools allow religion to be a part of their curriculum, schools, in essence, have compromised the First Amendment's Establishment Clause and the Free Exercise Clause. Inevitably, this may lead to support of a particular

religion while neglecting other religions. Such participation is in violation of the Establishment Clause and the Free Exercise Clause of the First Amendment of the U.S. Constitution .

Similarly, the U.S. Supreme Court ruled that it is unconstitutional for state officials and school board members to prescribe silent reading of the Bible or the recitation of the Lord's Prayer in the public schools. It makes no difference whether such reading is voluntary, read without comment, or whether students are allowed to excuse themselves from the exercise. In addition, documents also show that it is unconstitutional for public school officials to post the Ten Commandments on classroom walls, even if private money is used and there is an "avowed" disclaimer printed at the bottom of the poster declaring the school's neutrality and its secular purpose. When a public school is allowed to post something religious like the Ten Commandments that teaches a moral code of life, irrespective of whether the students read or ignore the poster, the school, implicitly and indirectly, is supporting particular religious principles and beliefs which are prohibited by the Establishment Clause of the First Amendment of the U.S. Constitution .

Since 1968, the U.S. Supreme Court has ruled that it is not unconstitutional for public schools to teach the Darwinian theory of evolution which asserts that humankind evolves from a lower order of primates (Campbell, 1993). In contrast, the U.S. Supreme Court has ruled that it is against the Establishment Clause and the Free Exercise Clause of the First Amendment for public schools to teach the theory of creation which bestows God as the Creator of all life-forms, including humankind (New American Bible, 1986,

Gn 1:1-2:2). The U.S. Supreme Court has also ruled that it is unconstitutional for states and public schools to devote the same amount of instructional time, energy, and teaching materials to teach the theory of creation and evolution (Aguillard v. Treen, 1985). If public schools are allowed to teach creation theory, the public schools are, undoubtedly, advocating one form of religion or another and, thus, violating the Establishment Clause and the Free Exercise Clause of the First Amendment, made applicable to the states by the Fourteenth Amendment (Aquila & Petzke, 1994).

In 1925, the Tennessee state trial court ruled that it was against the state law for public school teachers to teach the theory of evolution (Duker, 1971). In 1968 the case was presented before the U.S. Supreme Court Justices in Epperson v. Arkansas (1968) and the Supreme Court declared that it was unconstitutional for public schools to prohibit the teaching of the theory of evolution. The U.S. Supreme Court ruled the Arkansas "anti-evolution" statute violates the First Amendment's prohibition of state laws respecting an establishment of religion (Epperson, 1968, p. 97). The Supreme Court declared "The [Arkansas] statute was a product of the upsurge of 'fundamentalist' religious fervors of the twenties" (p. 98). In 1985 the U.S. Supreme Court ruled in Aguillard v. Treen (1985) that since the teaching of the theory of evolution is not religious, and does not respect or infringe on any particular religious beliefs or doctrine, the theory does not violate the Establishment Clause nor the Free Exercise Clause of the First Amendment. According to Eder (1982) and Godfrey (1981), the theory of evolution is based on scientific facts encompassing fossil records, plate tectonics, continental drifts, natural selection, artificial selection, and sexual selection. In addition, Eder (1982)

explained that the principal mechanisms of evolution involve mutation, selection, and isolation that acting over long periods of time have produced new varieties of species. Furthermore, it is unconstitutional for public schools to tailor their school curriculum to favor or support one or more religions, or even to discrediting the theory of evolution, through the school's teaching of religious principles or doctrines of creation science.

In a similar sphere, it is against the First Amendment's Establishment Clause and the Free Exercise Clause of the U.S. Constitution for public schools to give "balanced treatment" in time, money, energy, and instructional materials to the teaching of the theory of creation and evolution in the classrooms (Aguillard v. Treen, 1985, p. 426). Teaching creation theory would be considered unconstitutional because the Establishment Clause forbids public schools from establishing or favoring one, or more, or all religions. The Establishment Clause specifically calls for strict neutrality between government and public schools. In addition, the Free Exercise Clause also gives public school students the right to think, believe, and express their sincerely held religious and nonreligious beliefs unabridged by the state.

It is important to consider that the U.S. Supreme Court has consistently applied the Lemon three-pronged test since 1971 to determine the constitutionality of the Establishment Clause of the First Amendment (Wood, 1971). The Lemon three-part test is a helpful test for the Supreme Court to use because it brings consistency to the court's rulings. The Lemon three-part test states, (1) a law must have secular purpose, (2) a law must not advance or inhibit religious beliefs, and (3) a law must not entangle church and

state (Aquila & Petzke, 1994). If the U.S. Supreme Court sees a proposed law or conduct violates any of the three prongs, then that conduct would be invalid and unconstitutional.

People who include creation theory in public schools often use terms such as "creation science," or "scientific creationism," to give the term a more factual, scientific-based implication. To avoid litigation problems, parents, students, teachers, school administrators, and school board members must educate themselves to recognize that any theory with religious references should not be taught in public schools to respect the wall of separation between church and state so that individual rights are fully respected and safeguarded. It is against the Establishment Clause of the First Amendment of the U.S. Constitution for public schools to teach or respect any religious principles or doctrines in their curriculum—however subtle, minute, and denominationally neutral the public schools believe them to be—because these religious doctrines and principles are in conflict with the students' rights to religious freedom and expression guaranteed by the Free Exercise Clause of the First Amendment, which allows the students to freely express their sincerely held religious beliefs. It is unfair and unconstitutional to make public school students learn something they may not want to learn or that are contrary to their family values, beliefs, and upbringing.

It is against the Establishment Clause and the Free Exercise Clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, for public schools to have religious invocations and benedictions as part of the high school graduation ceremony. The U.S. Supreme Court interprets the ceremony as states supporting a particular religious cause which is prohibited by the Establishment Clause of

the First Amendment. Nevertheless, if prayer is student-initiated and student-led, and all of the graduating students agree to have prayer on or off school premises, then the prayer would be constitutional because no school officials are involved.

On the contrary, any school official-initiated religious ceremony at public school graduation is unconstitutional. A religious ceremony may infringe upon the beliefs, freedom, and viewpoints of the students. Thus, public school graduation should be exercised in a manner that is respectful to all students, parents, and educators alike. The way to achieve this status is to separate religion from public education and forego any religious ceremony at the public school graduation. In addition, according to research documents, standing or remaining silent during graduation ceremony can signify adherence or respect to a view, or both (Lee v. Weisman, 1992).

Public schools cannot deny a religious organization from temporarily renting school facilities for religious purposes, such as the showing and viewing of films relating to moral development, if the public schools allow other non-religious organizations to use the same facilities. It is also against the U.S. Constitution for public school officials to charge a higher rental rate for religious organizations than non religious organizations for use of school facilities due to the Fourteenth Amendment's due process clause which guarantees that everyone must be treated equally. By allowing religious groups to rent public school facilities, the public schools merely accommodate religious organizations' due process rights. Moreover, since the religious group meeting does not coerce, harass, or indoctrinate people with their religious ideas and beliefs, they are not violating other people's religious freedom. As a result, people are allowed to practice their religious

belief guaranteed under the First Amendment's Free Exercise Clause, made applicable to the states by the Fourteenth Amendment. And since public school officials are not involved in what occur when their facility is rented or are they a part of the planning and presentation of the religious organizations project, they do not support a particular religion so the Establishment Clause is not violated.

The Equal Access Act, enacted by the U.S. Congress in 1984, gives all public school students the same rights and opportunities to start a club that meets before or after school (Westside v. Mergens, 1990). The Equal Access Act holds that if a public school gives one group of students, for example the French Club, the right to start a club, then the public school is obliged to give another group of students, for example, the Fellowship of Christian Athletes, the same rights and opportunities to start their own club as well. The Equal Access Act (EAA), at first, seems like a bad idea in that other "bad" clubs like the Unwed Club, the Smoking Club, or the Unpatriotic Club may emerge. But on close examination, EAA is not negative because EAA gives and respects a student's right to the Due Process Clause guaranteed by the Fourteenth Amendment and free religious exercises guaranteed by the First Amendment. Moreover, the EAA is a neutral act when the club is student-led, student-initiated, not teacher-initiated, and no students are coerced to join the club. Thus, religious clubs that meet before or after school do not endorse or violate the Establishment Clause of the First Amendment.

Implications

The First Amendment's Establishment Clause and the Free Exercise Clause issues and tensions are often difficult for the state and federal courts to interpret because

people are often divided among themselves on issues reflecting the roles of religion in public schools (Hastings, 1988). What is certain, however, is through the doctrine of "stare decisis,"—in another words, let the court decision stands—the American judicial system has made it more recognizable and less doubtful for the states and the people to agree on and decide what is constitutionally permissible and what is constitutionally impermissible. For instance, the United States Supreme Court has ruled that it is unconstitutional and in violation of the Establishment Clause and the Free Exercise Clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, for public schools to have (1) prayer in classrooms, (2) teaching of the theory of creation in classrooms, and (3) have religious ceremony at public school graduation. However, the Supreme Court agreed that it is not unconstitutional nor violates the Establishment Clause and the Free Exercise Clause of the First Amendment of the U.S. Constitution for public schools (1) to teach the theory of evolution in classrooms, and (2) to allow religious organizations to use the schools non-used facilities for religious purposes.

The question one must ask: Are there ways in which public school districts, school administrators, and school teachers can consistently respect the First Amendment's Establishment Clause and the Free Exercise Clause of the students so that an objective teaching and discussion of the diversity of religious beliefs and doctrines can coexist in the American public school classrooms? Given that there are more than 110 different "home" languages (Kniker, 1988, p. 308) and more than 289 religious denominations (Adler, 1996, p. 329) with several versions of the Bible including the King

James, Douay, New American Bible, Jerusalem, American Standard, and Good News (Losito & Gordon, 1996, p. 160) and approximately 235,000 churches (Simonds, 1993, p. 29) operating in America, can a public school teacher sincerely devote an equal amount of time and attention to fairly teach about major religious values, beliefs, and principles from each of the 289 religions in America? Certainly, the answer is "No."

Whose ideas and beliefs should public school administrators, teachers, community leaders, parents, and state legislatures allow discussed in public school classrooms? Is Christianity, for example, necessarily a superior religion than Hinduism, Judaism, Islam, Taoism, Sikh, Shinto, or Confucianism because Christianity is the largest religion in the Western world with the most supporters and followers (Carmody & Carmody, 1984)? Alternatively, is the Vedic, a sacred book of the Hindu religion, necessarily considered a more sacred, truthful, or righteous book than the Bible, the Koran, the Torah, or Confucius Scriptures? Certainly, the answer is as right and as truthful as one wants it to be. Consequently, religion is best left to homes, families, churches, synagogues, mosques, and temples. As Justice Tom Clark affirmed in Abington v. Schempp (1962), "The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind" (p. 226).

The American public schools owe it to students of this great nation to treat each student with dignity and respect regardless of religious beliefs and affiliations so that each has the same opportunities to succeed in life. Today, it is doubtful that any student may reasonably be expected to succeed in life if he or she is denied the opportunity of an

education. The value of an education can best be stated in San Antonio Independent School District v. Rodriguez, 1973, 411 U.S. at 1337,

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.... Today it is a principal instrument in awakening the child to cultural values, in preparing him [or her] for later professional training, and in helping him to adjust normally to his environment.
>
> Education directly affects the ability of a child to exercise his [or her] First Amendment rights, both as a source and as a receiver of information and ideas, whatever interests he may pursue in life.... Education prepares individuals to be self-reliant and self-sufficient participants in society.

This investigation did not cover all aspects of religion and the American school. As a result, there are many possibilities for even further additional investigation. Such potential areas of research might include the following questions: (1) How have individual school districts interpreted these rulings in their own policies and practices? (2) Is there a difference between these interpretations in urban and rural school districts? (3) Are similar accommodations being made for other religious groups where, for example, in many small districts no homework is assigned on Wednesday because it is church night? (4) How are the public schools accommodating to religious holidays that are now non-Christian-based such as Ramadan? and (5) How can the public schools teach these students an American secular understanding of world religions without breaching the wall of separation? These are but a small number of the many questions that remain to be answered concerning religion and the public schools.

CHAPTER V

CONCLUSIONS

This investigation supports the exclusion of religion in public schools due to the fact that America is a multi-ethnic nation with diversity of people holding diverse religious worldviews and beliefs. If religion is incorporated into the public school classrooms, it may lead to disharmony and resentment among students, parents, community leaders, school administrators, religious leaders, state and local legislatures, and teachers alike, who hold different views from those taught in the classroom.

Furthermore, this investigation indicates (1) it is not possible for American public schools to genuinely devote an equal amount of instructional time, materials, and energy into teaching every major religious viewpoint given that there are more than 289 religious denominations in America; (2) it is encroaching to require public school teachers to teach religious ideas, values, and beliefs that are contrary to theirs; (3) public school religious teaching abridges students' rights to religious freedom guaranteed by the First Amendment's Free Exercise Clause of the U.S. Constitution since there are students who hold dearly to no particular religion, some to one, and others in between; and (4) American public schools were developed and should be for academic training and preparation for life and the workforce, and should not be used as religious indoctrination centers.

This investigation further concludes that issues such as prayer in public schools, religious ceremony at public school graduation, teaching of evolution versus creation, and uses of public school facilities by religious organizations have, at least for the

present, been adjudicated by the United States Supreme Court. For example, the U.S. Supreme Court has ruled in favor of not incorporating religion into public school classrooms since the Supreme Court sees this as the states trying to advance one form of religion or another at the expense of the public and of the state compulsory education law. Nevertheless, it remains to be seen whether similar cases will be revisited and be interpreted differently by the Supreme Court in the future.

Future issues concerning the law and religion in public schools include (1) school uniforms with a religious motif, (2) school voucher and tax credit plans that allow students to attend religious schools, and (3) financing of equitable educational needs for students with disabilities who wish to attend religious schools. It is hoped that rulings of the Supreme Court in the future, as they confront these new issues, will continue to uphold the rule of law in our democracy. Decisions that maintain the wall of separation between church and state, in the end, benefit all public school students in America.

In summary, through this investigation, it is evident that religion should not be a part of the American democratic and pluralistic public education system since religion is a highly personal and sensitive issue that should rest with individual interests, values, beliefs, and family traditions. To do otherwise would be to violate the foundations and the principles on which the United States was founded, that "All men [and women] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...." That "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 laws...."

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Appendix A

RELIGION IN THE PUBLIC SCHOOLS:
A JOINT STATEMENT OF CURRENT LAW[1]

- Student Prayers. "Students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive. Because the Establishment Clause does not apply to purely private speech, students enjoy the right to read their Bibles or other scriptures, say grace before meals, pray before tests, and discuss religion with other willing students listeners."

  "In informal settings, such as the cafeteria or in the halls, students may pray either audibly or silently, subject to the same rules of order as apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen or to compel other students to participate."

- Teaching about Religion. "Students may be taught about religion, but public schools may not teach religion .... It would be difficult to teach art, music, literature, and most social studies without considering religious influences."

  "The history of religions, comparative religion, the Bible (or other scripture) as literature ... are all permissible public school subjects. It is both permissible and desirable to teach objectively about the role of religion in the history of the United States and other countries ..."

- Student Assignments. "Students may express their religious beliefs in the form of reports, homework, and artwork, and such expressions are constitutionally protected. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes."

- Distribution of Literature. "Students have the right to distribute religious literature to their schoolmates, subject to those reasonable time, place, and manner, or other constitutionally-acceptable restrictions imposed on the distribution of all nonschool literature. Thus, a school may confine distribution of all literature to a particular table at particular times. It may not single out religious literature for burdensome regulation."

- Religious Persuasion. "Students have the right to speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. But school officials should intercede to stop students religious speech if it turns into religious harassment aimed at a student or a small group of students."

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[1] Frame, 1995, p. 45; Loconte, 1996, pp. 20-21.

- Religious Holidays. "Generally, public schools may teach about religious holidays, and may celebrate the secular aspects of the holiday and objectively teach about their religious aspects. They may not observe the holidays as religious events."

- Excusal from Lessons. "Schools enjoy substantial discretion to excuse individual students from lessons which are objectionable to that student or to his or her parent on the basis of religion. Schools can exercise that authority in ways which would defuse many conflicts over curriculum content."

  "If it is proved that particular lessons substantially burden a student's free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, the school would be legally required to excuse the student."

Appendix B

SUPREME COURT RULING ON SIGNIFICANT CASES

I. Prayer in Public Schools:

1. It is Unconstitutional for Champaign Public Schools, Illinois, to have religious instruction On School Ground and in the classrooms (McCollum v. Board of Education, 1948).

2. It is NOT Unconstitutional for New York City School District to have religious instruction Off School Ground in its public schools (Zorach v. Clauson, 1952).

3. It is Unconstitutional for Board of Education of Union Free School District No. 9, New Hyde Park, New York, to make students voluntary pray in the public school classrooms (Engel v. Vitale, 1962).

4. It is Unconstitutional for the Common Wealth of Pennsylvania to make students silent reading of the Bible or recitation of the Lord's Prayer, or both, in the public school classrooms (Abington School District v. Schempp, 1963).

5. It is Unconstitutional for the state of Kentucky to require all public schools to post the Ten Commandments poster on the wall of each public school classrooms (Stone v. Graham, 1980).

6. It is Unconstitutional for the state of Alabama to authorize a daily moment of silence for meditation or voluntary prayer in public schools (Wallace v. Jaffree, 1985).

II. Teaching of Evolution versus Creation in Public Schools:

1. Scopes v. Tennessee, 1925/1927. It is against the Tennessee state law, the Butler Act, for public school teachers to teach the theory of evolution in the public school classrooms.

2. It is Unconstitutional for the state of Arkansas to forbid the teaching of evolution in public school classrooms (Epperson v. Arkansas, 1968).

3. It is Unconstitutional for the state of Arkansas to make public school teachers devote the same amount of time and instructional materials to the teaching of the theory of evolution and creation (McLean v. Arkansas, 1983).

4. It is Unconstitutional for the state of Louisiana to make public school teachers give equal treatment in instructional methods and materials to the theory of evolution and creation (Aguillard v. Treen, 1985; Edwards v. Aguillard, 1987).

III. Religious Ceremony at Public Schools Graduation:

1. It is Unconstitutional for Central Community School District of Decatur, Iowa, to include in its graduation a religious ceremony of invocation and benediction (Graham v. Central Community School District of Decatur, 1985).

2. It is Unconstitutional for the city of Providence, Rhode Island, to have nonsectarian prayer at public school graduation ceremony (Lee v. Weisman, 1992).

IV. Public School Facilities for Religious Use:

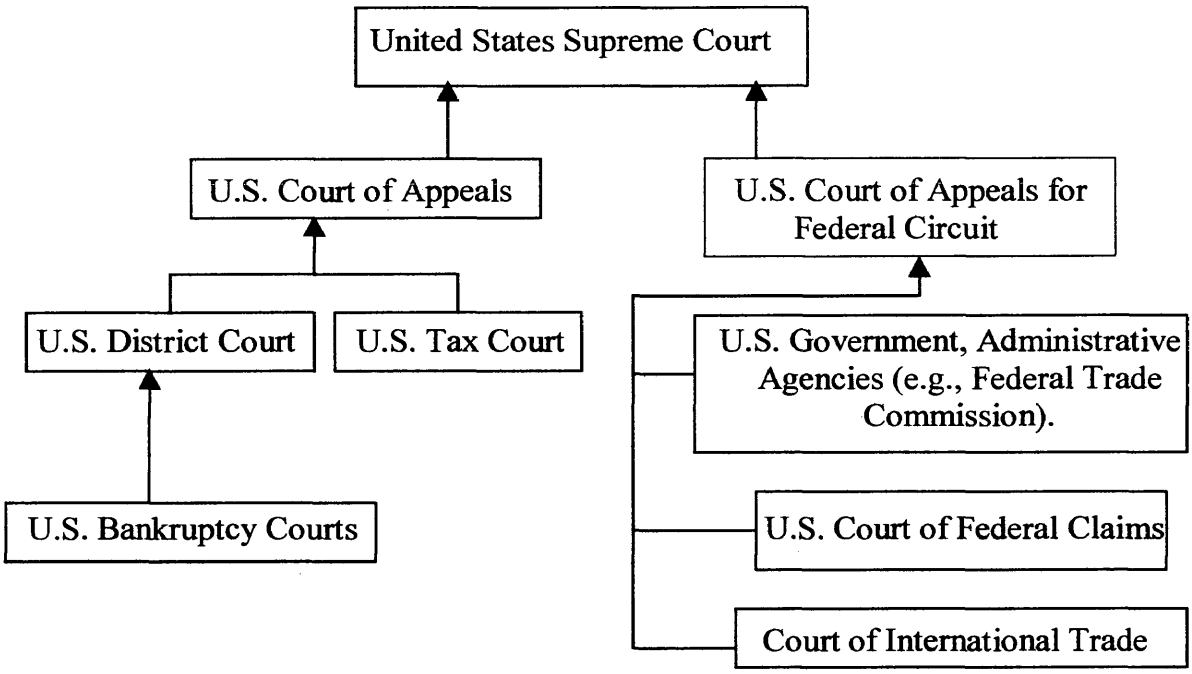
1. It is Not Unconstitutional for East Brunswick Public Schools, New Jersey, to grant temporary use of their non-used school buildings to religious organizations as that of non-religious organizations as long as the same rental rates are applied (Resnick v. East Brunswick Township Board of Education, 1978).

2. It is Unconstitutional for Westside Public Schools, Omaha, Nebraska, not to allow students to have prayer club in public schools when another club is given permission. This violates the Equal Access Act passed by the U.S. Congress in 1984 (Board of Education of the Westside Community Schools v. Mergens, 1990).

3. It is Unconstitutional for Center Moriches Union Free School District, New York, to not allow a church, Lamb's Chapel, to use its school facilities when other organizations are allow the access (Lamb's Chapel v. Center Moriches Union Free School District, 1993).

Appendix C

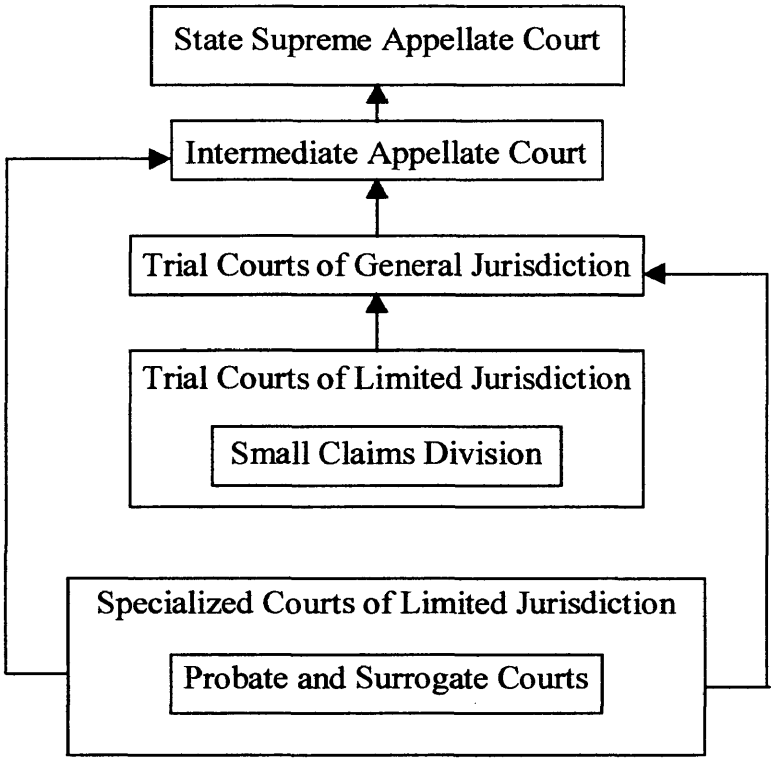
FEDERAL COURT SYSTEM[2]



[2] Merriam-Webster Dictionary of Law, 1996, p. 552.

Appendix D

STATE COURT SYSTEM[3]



[3] Merriam-Webster Dictionary of Law, 1996, p. 554.

Appendix E

CIRCUIT OF THE UNITED STATES COURT OF APPEALS[4]

CIRCUIT COURTS	STATES
I:	Puerto Rico, Maine, New Hampshire, Massachusetts, and Rhode Island
II:	Vermont, New York, and Connecticut
III:	Pennsylvania, New Jersey, Delaware, and Virgin Islands
IV:	Maryland, West Virginia, Virginia, North Carolina, and South Carolina
V:	Texas, Louisiana, and Mississippi
VI:	Michigan, Ohio, Kentucky, and Tennessee
VII:	Wisconsin, Illinois, and Indiana
VIII:	North Dakota, South Dakota, **Nebraska**, Minnesota, Iowa, and Missouri
IX:	Alaska, Hawaii, Washington, Oregon, California, Montana, Idaho, Nevada, and Arizona
X:	Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma
XI:	Alabama, Georgia, and Florida

[4] Merriam-Webster Dictionary of Law, 1996, p. 551; Federal Supplement, 1960, v. 185, front cover inset.