Student Rights

Introduction

A number of years ago a school in Missouri was instructed by court order to sponsor school dances over the objections of parents and the school board because the court claimed that the opposition was of a religious nature thus violating separation of church and state. Students have been stopped from voluntarily praying before athletic events, informal Bible studies have been moved off campus, and traditions such as opening prayer and benedictions during graduation ceremonies have been halted by court order or administrative decrees. Textbooks have also been purged of Judeo- Christian values and teachers have been ordered to remove Bibles from their desks because of the potential harm to students that they represent. Have the schools created an environment that is hostile to Christian belief?

Stephen Carter, a Yale law professor (*The Culture of Disbelief*, Basic Books, 1993) argues that religion in America is being reduced to the level of a hobby, that fewer and fewer avenues are available for one's beliefs to find acceptable public expression. Our public schools are a prime example of this secularization. This has caused undue hardship for many Christian students. Some administrators, reacting to the heated debate surrounding public expressions of faith, have sought to create a neutral environment by excluding any reference to religious ideas or even ideas that might have a religious origin. The result has often been to create an environment hostile to belief, precisely what the Supreme Court has argued against in its cases which restricted practices of worship in the schools such as school-led prayer and Scripture reading. The fallout of removing a Christian influence from the marketplace of ideas on campus has been the promotion of a naturalistic worldview which assumes that the

universe is the consequence of blind chance.

This whole area of student rights is a relatively recent one. In the past, the courts have been hesitant to interfere with the legislative powers of state assemblies and the authority of locally elected school boards. But since the sixties, more and more issues are being settled in court. This trend reflects the breakdown of a consensus of values in our society, and it is likely to get worse.

When public schools reinforce the values held in common by a majority of parents sending their children off to school, conflicts are likely to be resolved locally. But in recent decades school administrators have been less likely to support traditional Judeo- Christian values which are still popular with most parents. Instead, schools have often abandoned accommodating neutrality and purged Christian thought from the school setting. Parents and students have felt compelled to take legal action, claiming that their constitutional rights of free speech and religious expression have been violated.

How should the U. S. Constitution’s guarantee of freedom of religion be balanced with the growing diversity in our public schools? In a time of growing centralization in education, how can schools cope with the rights of students that are far more diversified than in the past?

In this pamphlet we will look at some of the specific issues surrounding the concept of student rights beginning with a definition of the often used phrase “separation of church and state.” Then we will cover equal access, freedom of expression, the distribution of religious materials, prayer, as well as the Hatch Amendment.

Separation of Church and State

In 1803 Thomas Jefferson helped to ratify a treaty with the Kaskaskia Indians resulting in the United States paying one

hundred dollars a year to support a Catholic priest in the region, and contributing three hundred dollars to help the tribe build a church. Later, as president of the Washington, D.C., school board, Jefferson was the chief author of the first plan for public education in the city. Reports indicate that the Bible and the Watts Hymnal were the principal, if not the only books, used for reading in the city's schools. Yet those who advocate a strict separation between church and state usually refer back to Thomas Jefferson's use of the phrase in 1802 when speaking to the Danbury Baptist Association in Connecticut. By using this phrase did Jefferson hope to separate Christian thought and ideals from all of public life, including education? Actually, Jefferson was a very complex thinker and desired neither a purely secular nor a Christian education.

What then, does the phrase "separation of church and state" mean? More importantly, what did it mean to the Founding Fathers? This is a crucial issue! A common interpretation was recently expressed in a major newspaper's editorial page. The writer argued that public school students using a classroom to voluntarily study the Bible would be a violation of the establishment clause of the First Amendment, and that the mere presence of religious ideas and speech promotes religion. His reasoning was that the tax dollars spent to heat and light the room puts the government in the business of establishing a religion. Is this view consistent with a historical interpretation of the First Amendment?

Recent Supreme Court cases dealing with church/state controversies have resulted in some interesting comments by the justices. In the *Lynch vs. Donnelly* case in 1984, the court mentioned that in the very week that Congress approved the Establishment Clause as part of the Bill of Rights for submission to the states, it enacted legislation providing for paid chaplains for the House and Senate. The day after the First Amendment was proposed, Congress urged President

Washington to proclaim a day of public thanksgiving and prayer. In *Abington vs. Schempp* the Court declared that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him and that this is clearly evidenced in their writings, from the Mayflower Compact to the U. S. Constitution itself.

The Supreme Court has recognized that every establishment clause case must balance the tension between unnecessary intrusion of either the church or the state upon the other, and the reality that, as the Court has so often noted, total separation of the two is not possible. The Court has long maintained a doctrine of accommodating neutrality in regards to religion and the public school system. This is based on the case *Zorach vs. Clauson* in 1952 which stated that the U. S. Constitution does not require complete separation of church and state, and that it affirmatively mandates accommodation, not merely tolerance of all religions, forbidding hostility toward any.

Any concept of students' rights must include some accommodation by our public institutions in regards to religious beliefs and practices. The primary purpose of the First Amendment, and its resulting "wall of separation" between church and state, is to secure religious liberty.

Equal Access

On the surface, this issue seems fairly uncomplicated. Do students have the right to meet voluntarily on a high school campus for the purpose of studying the Bible and prayer if other non-curricular clubs enjoy the same privilege? Yet this issue has been the focus of more than fifteen major court cases since 1975, the Equal Access Act passed by Congress in 1984, and finally a Supreme Court case in 1990.

To many, this subject involves blatant discrimination against students who participate in activities that include religious

speech and ideas. By refusing to allow students to organize Bible clubs during regular club meeting times, administrators are singling out Christians merely because of the content of their speech.

To others, the idea of students voluntarily studying the Bible and praying presents a situation "too dangerous to permit." Others see equal access as just another attempt to install prayer in the public schools, and they hold up the banner of separation of church and state in an attempt to ward off this evil violation of our Constitution.

Let's review exactly what legal rights a student does enjoy thanks to the "Equal Access" bill and the Mergens Supreme Court decision in 1990. First, schools may not discriminate against Bible clubs if they allow other non-curricular clubs to meet. A non-curricular club or student group is defined as any group that does not directly relate to the courses offered by the school. Some examples might be chess clubs, stamp collecting clubs, or community service clubs. School policy must be consistent towards all clubs regardless of the content of their meetings. The specific guidelines established are:

- *The club must be student initiated and voluntary.*
- *The club cannot be sponsored by the school.*
- *School employees may not participate other than as invited guests or neutral supervisors.*
- *The club cannot interfere with normal school activities.*

It also goes without saying that these clubs must follow other normally expected codes of behavior established by the school. The federal government can cut off federal funding of any school that denies the right of students to organize such clubs. This is a substantial penalty given that title moneys for special education, vocational training, and library

materials are a significant portion of many schools' income.

One would think that the passing of the Equal Access Bill and its affirmation by the Supreme Court would have settled this issue. It didn't. Mostly due to ignorance of the law and occasionally an anti-religion bias, school administrators sometimes still balk at allowing Bible clubs. Unfortunately, it may take a letter from a Christian legal service in order to bring some school administrators up to speed on the legality of the clubs. Even so, some schools are removing all non-curricular clubs in order to avoid having to allow Bible clubs. This is a remarkable position for school administrators to take and is yet another evidence of the polarization taking place in our society between religious and non-religious people.

The way that students utilize the right to equal access is important. The agenda for any such club should be (1) to encourage and challenge one another to strive for excellence in every area of life and (2) to be a source of light within the secular darkness covering much of our teenage culture today. Angry confrontation with administrators and other students would ruin the positive witness such a club might otherwise accomplish.

Other Rights of Christian Students: Freedom of Speech

In 1969, two high school students and one junior high student who wore black arm bands in protest of the Vietnam war. They were warned of potential expulsion, an admonition which they ignored, and were subsequently removed from school.

The resulting court case made its way to the Supreme Court which determined that students do not shed their constitutional rights at the school house door. This landmark decision, known as the Tinker case, greatly affected the way school administrators deal with certain types of discipline

problems. Since the students chose a non-aggressive, non-disruptive form of protest, and since there was no evidence that they in any way interfered with the learning environment of the school, the Court argued that the administrators could not forbid protest simply because they disagreed with the position taken by the students or because they feared that a disruption might occur.

A two-point test has been suggested as a result of the Tinker case. Before setting a policy that will forbid some student behavior, administrators must prove that the action will interfere with or disrupt the work of the school, or force beliefs upon another student. Christians that wear crosses or T-shirts with a Christian message violate neither test. The same idea applies to the spoken word. The Tinker decision embraced the idea that fear or apprehension of disturbance is not enough to overcome the right of freedom of expression. Words spoken in class, in the lunchroom, or on the campus may conflict with the views of others and contain the potential to cause a disturbance, but the Court argued that this hazardous freedom is foundational to our national strength.

The Supreme Court has affirmed the right of Christians to distribute literature on campus, with some qualifications. In the case *Martin vs. Struthers* the Court equated free speech with the right to hand out literature as long as the literature in question was not libelous, obscene, or disruptive. If the school has no specific policy concerning the distribution of literature by students, Christians may freely do so. If a policy exists, students must conform to it. This may include prior examination of the material, and distribution may be denied during assemblies and other school functions. Outsiders do not enjoy similar privileges. The literature must be selected and distributed by the students.

Although the Supreme Court has outlawed school-sponsored prayer and reading from the Bible, it has not moved to restrict individuals from doing so. Graduation prayers by

students have created a legal battle which resulted in *Lee vs. Weisman*, a Supreme Court decision which found that a prayer which was guided and directed by the school's principal was unconstitutional. The Court basically said that the school cannot invite a professional clergyman to a school function in order to pray. Students or others on the program may pray voluntarily. The student body may choose a student to act as a chaplain. Another scenario might have parents or students creating the agenda for the graduation ceremony, thus removing the school from placing a prayer on the program. Students do not shed their constitutional right to free speech when they step to the podium.

Christian students on campus must remember that certain responsibilities coincide with these rights. Proverbs 15:1 states that, "A gentle answer turns away wrath, but a harsh word stirs up anger." If we use our rights and privileges in a Christlike manner we will indeed be His ambassadors, anything less would be contrary to His will.

Other Student Rights

In 1925, the Supreme Court case *Pierce vs. Society of Sisters* debated the right of parents to send their children to private schools. In that case, justice James McReynolds said, "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right coupled with the high duty, to recognize and prepare him for additional obligations." In 1984, Congress held a series of hearings on reported abuses by educators who were attempting to change the beliefs of their students in a way that might again be a challenge to parental authority. Congress found that some schools might be overstepping their traditional role by concentrating more on what students believe than on what they know.

The result of these hearings is a law commonly known as the Hatch Amendment. The law protects students from federally

sponsored research and experimental programs that make inquiries into students' personal sexual, family, and religious lives. The law stipulates that all materials, including manuals, audio-visuals, and texts are to be made available to parents for review. And secondly, students shall not be required to submit to psychiatric testing, psychological examination, or treatments which delve into personal areas that might be considered sensitive family matters. But there is one big problem with the law, it only covers federally funded experimental or research-driven programs. What about abusive course-work which isn't funded directly by federal research?

In regards to day-to-day classwork, the courts have made a distinction between mere exposure to objectionable material and a school's attempt to coerce its students to adopt a particular political or religious viewpoint. Parents who can prove that coercion is taking place will have a much greater chance in court of forcing the school to accommodate to their beliefs by changing the school's practices. If coercion is not taking place, and a child is merely being exposed to objectionable material, being excused from the class is more likely.

On the positive side, Christian students do have the right to include religious topics and research in their school work when appropriate. In *Florey vs. Sioux Falls School District*, Circuit Judge McMillian clarified why students have the right to use religious materials in the classroom. He states that, "To allow students only to study and not to perform religious art, literature and music when such works have developed an independent secular and artistic significance would give students a truncated view of our culture." In another case titled the *Committee for Public Education vs. Nyquist*, the Supreme Court stated, "The First Amendment does not forbid all mention of religion in public schools. It is the advancement or inhibition of religion that is prohibited." When presented

objectively any religious topic is fair game for both student and teacher. Indeed, both could make good use of this freedom in covering such topics as the religious views of our Founding Fathers, what role Christian thought has played in important issues such as slavery and abortion, and how Christian thought has been in conflict with other worldviews.

Students can be an effective instrument for reaching other students with the Gospel, but only if they are living consistently with what they believe. This is possible given the rights granted them by the U. S. Constitution. It is our job as parents to see that our schools protect the rights of our children not only to believe, but to live Christianly, for what good is freedom of religion if it covers only our private lives?

Resources

Carter, Stephen L. *The Culture of Disbelief*. New York, N.Y.: Basic Books, 1993.

Staver, Mathew D. *Faith & Freedom*. Wheaton, Ill.: Crossway Books, 1995.

Whitehead, John W. *The Rights of Religious Persons In Public Education*. Wheaton, Ill.: Crossway Books, 1991.