THE FREEDOMS OF SPEECH AND ASSOCIATION AND EDUCATION

Thesis for the Degree of Ph. D.

MICHIGAN STATE UNIVERSITY
KIYOTO MIZUBA

1969

This is to certify that the

thesis entitled

THE FREEDOMS OF SPEECH AND ASSOCIATION AND EDUCATION

presented by

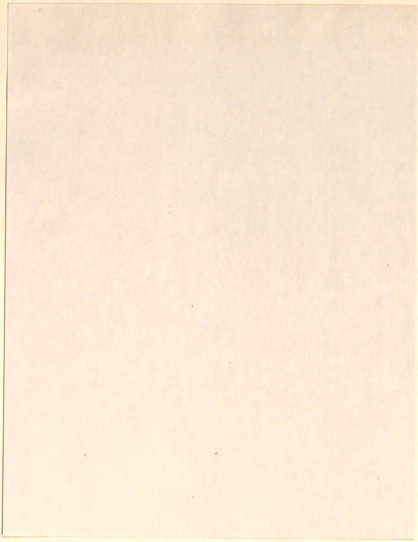
KIYOTO MIZUBA

has been accepted towards fulfillment
of the requirements for

Ph. D. degree in Education

Richard Featherstone
Major professor

Date April 7, 1969



ABSTRACT

THE FREEDOMS OF SPEECH AND ASSOCIATION AND EDUCATION

By

Kiyoto Misuna

Purpose:

While much school law research has sought to guide educational practices, this study concentrates on recent Supreme Court rulings, seeking specifically (1) to examine the relation between education and the freedoms of speech and association, (2) to identify how certain freedoms have been protected in public schools' operations, and (3) to then test the [illegible] Supreme Court decisions [illegible] speech and association.

The protection [illegible] association of [illegible] by the United Stat[illegible] permissible and [illegible]

Reasoning [illegible] the syllogism, [illegible] of precedent, was [illegible]

ABSTRACT

THE FREEDOMS OF SPEECH AND ASSOCIATION AND EDUCATION

By

Kiyoto Mizuba

Purposes

While much school law research has sought to guide educational practices, this study concentrates on recent Supreme Court rulings, seeking specifically (1) to examine the relation between education and the freedoms of speech and association, (2) to ascertain how far these freedoms have been protected in recent Supreme Court decisions, and (3) to then test the educational soundness of Supreme Court decisions concerning teachers' free speech and association.

Hypothesis

The protection extended to freedom of speech and association of teachers by the First Amendment as construed by the United States Supreme Court is educationally acceptable and relevant.

Methodology

Reasoning distinctive of the judicial process or the syllogism, a three-step process governed by the doctrine of precedent, was used to test the thesis. The major

premise, that achieving certain purposes of education depends upon free speech and association, was validated by a random sampling of educators. And the minor premises, statements of Supreme Court pronouncements which permitted or restricted teachers' speech and association, were established through documentary analysis. To the degree that the decisions studied extended the freedoms of speech and association to teachers, the hypothesis was supported.

Conclusions

This investigation found the Court granting broad protection to the free speech and association of teachers. Specifically, the Court ruled that: (1) the state may not protect its educational system from subversion by means that "stifle the free play of the spirit which all teachers ought especially to cultivate,"[1] when the end can be more narrowly achieved because the transcendant importance of academic freedom cannot permit laws that cast a pall of orthodoxy over the classroom:[2] when teachers must guess what conduct or utterance may lose them their position, substantial limits are imposed on the exercise of First Amendment rights; (2) dismissing a teacher for mere knowing membership without specific intent to further the unlawful aims of an organization offends freedom of association;[3] (3) indiscriminate classification of innocent with knowing association in subversive organizations offends due process;[4] (4) to compel a teacher to disclose

every associational tie is to impair his right to free association;[5] (5) a vague and indefinite statute which permits punishment of fair use of opportunity for free political discussion violates the guaranty of liberty in the Fourteenth Amendment;[6] (6) the state may not require one to choose between subscribing to a vague and broad oath and refusing to take an oath with consequent loss of employment, particularly where free dissemination of ideas may be the loser;[7] (7) the First Amendment protects controversial as well as conventional dialogue, at the state as well as the federal level, and extends to advocacy and debate;[8] (8) questioning a teacher by a state attorney general concerning the contents of his lecture or knowledge of a political party and convicting him for contempt for refusing to answer are invasions of academic and political freedom;[9] (9) dismissing a teacher for refusing to answer questions unrelated to his teaching duties and put to him by a congressional committee violates due process;[10] and (10) absent proof of false statements, knowingly or recklessly made, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis of his dismissal.[11] Only four other rulings struck down teachers' challenges.

Therefore, these decisions of the Court assure teachers that they may discharge their academic duties without fear of conviction and encourage intellectual inquiry, unorthodox thinking, and creative expression in students. Thus, the syllogism, carried through to its

conclusion, supports the thesis that the Court's construction of the freedoms of speech and association of teachers is educationally sound.

Bibliography

[1]Keyishian v. The Board of Regents of the University of New York, 385 U. S. 589, 602 (1967).

[2]Ibid., p. 603.

[3]Elfbrandt v. Russell, 384 U. S. 11, 16 (1966).

[4]Wieman v. Updegraff, 344 U. S. 183, 191 (1952).

[5]Shelton v. Tucker, 364 U. S. 479, 485-86 (1960).

[6]Cramp v. Board of Public Instruction, 368 U. S. 278, 288 (1961).

[7]Baggett v. Bullitt, 377 U. S. 362, 374 (1964).

[8]Whitehills v. Elkins, 389 U. S. 54, 57 (1967).

[9]Sweezey v. New Hampshire, 354 U. S. 234, 235-37 (1957).

[10]Slochower v. Board, 350 U. S. 551, 559 (1956).

[11]Pickering v. Board of Education, 36 LW 4495, 4498 (1968).

THE FREEDOMS OF SPEECH AND ASSOCIATION AND EDUCATION

By

Kiyoto Mizuba

A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

College of Education

1969

DEDICATION

To Dr. George M. Johnson, whose faith in democracy, abiding belief in human rights, and unimpeachable fairness in the interpretation of law have inspired this work from its inception to its completion.

ACKNOWLEDGMENTS

Any initial venture into major research depends heavily upon the sympathetic and expert help of others. This student benefited particularly from the wise counsel and opportune encouragement proferred by his doctoral committee: Dr. Fred Vescolani, Dr. Troy L. Stearns, and Dr. Peter Manning.

The chairman of the committee, Dr. Richard L. Featherstone, was especially generous of his time in directing the writing of this dissertation; his unequivocal standard of personal excellence stood as a constant criterion for the present research effort. Similarly Dr. George M. Johnson, while not on the committee, guided the writer step by step. Without his knowledge of legal reasoning and constitutional law, the study could never have reached this point.

Finally to Susan my wife, who unselfishly supported my quest and who takes as much pleasure in my accomplishments as I do, mahalo.

TABLE OF CONTENTS

Chapter Page

Chapter Page

CHAPTER I

THE PROBLEM

Introduction

We know that human institutions mutually affect one another: changes occurring in one frequently necessitate adjustments in others. And, the relationship between education and law is no exception: pronouncements from the courts do exert a powerful influence on education, just as changes in educational purposes and in the means for achieving these purposes might conceivably influence judicial deliberations. If constitutional guarantees of individual freedoms are construed restrictively for teachers, feelings of suspicion and prejudice may result. Such restrictions thus could seriously hamper creative teaching and untrammeled learning, while guarantees to the teacher of individual freedom could promote free expression and creative thinking. Be this as it may, the status and probable impact of recent judicial decisions concerning the freedoms of speech and association have yet to be determined and assessed in terms of educational goals and practices.

Statement of the Problem

As American citizens, teachers are protected by the Constitution and guaranteed the same freedoms enjoyed by other citizens. They enjoy the freedom to speak out, to criticize, to dissent, and to advocate and are restricted only by laws that protect the property and person of others; as citizens teachers may assemble peaceably and join professional, social, religious or political groups of their choice; they may believe and think as they please. Generally, teachers may run for and hold public office, campaign for candidates of their choice, and broadcast their political philosophies, subject only to certain limitations of the Hatch Act.[1]

Despite these elementary facts, some school and legal authorities believe the role of the teacher is sufficiently different from other public service positions to warrant restricting certain constitutional rights of teachers. As M. Chester Nolte stated,

> . . . when persons enter the teaching profession, they serve as examples to those under their supervision. While it may be thought a comparatively high price to pay for holding employment as a teacher . . . [teachers] are expected to display legally exemplary conduct and observe local conventions.[2]

---

[1]E. C. Bolmeier, "Legal Scope of Teachers' Freedoms," The Educational Forum, XXIV (January, 1960), p. 199.

[2]M. Chester Nolte, "Teachers Image: Conduct Important," American School Board Journal, CLV (July, 1967), p. 27.

And Bolmeier agreed that a teacher must exercise his legal rights with due consideration of the effects upon school children: "by virtue of his performing a government function as an employee, he must conform to certain laws, rules and regulations not applicable to the ordinary citizen."[3] In discussing how the behavioral demands of teaching relate to morality, Hamilton stated that a person entering the teaching profession legally surrenders a measure of his freedom of action. A person may be legally free to be immoral, so long as he violates no law, but he is not free to be a teacher and engage in immoral conduct.[4]

These authorities agree that the position of a teacher is sufficiently unique to warrant restrictions on an individual's rights. The traditional formulation that public employment is a privilege and not a right, first enunciated by Justice Holmes in 1892,[5] has often produced restrictions on the rights of teachers. But since the Adler case in 1952, the attitude of the United States Supreme Court has shifted dramatically concerning the freedoms of speech and association of teachers, seemingly

---

[3]Bolmeier, op. cit.

[4]Robert R. Hamilton, The Bi-Weekly School Law Letter, IV, No. 22 (December 23, 1954), p. 87.

[5]McAuliffe v. City of New Bedford, 155 Mass. 216, 29 N.E. 317 (1892).

toward allowing teachers full enjoyment of their individual liberties. Subsequent split decisions, however, indicate disagreement among the justices regarding the extent to which these individual freedoms are necessary to good teaching and learning. In view of the apparent conflict of judicial opinion, this investigation will seek to assess the educational soundness of recent court decisions which define how far the First Amendment, granting freedom of speech and association, extends to teachers; we shall especially seek to determine whether court decisions in these areas tend to liberate or restrict good teaching.

Statement of Purposes

Along with other citizens, teachers are turning to the courts more and more frequently to settle conflicts regarding their rights, particularly, as one source suggests, since "new problems in education have emerged and old ones have gained increased emphasis and importance."[6] Current conflicts often involve alleged violations of the fundamental freedoms of speech and association, with the present trend of Supreme Court construction of the First Amendment giving these freedoms a preferred status. Since recent court decisions in this area reflect sharply

---

[6]Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Brooklyn: The Foundation Press, Inc., 1959), p. 19.

divided opinions among the high court justices, however, we may assume that many other judges as well as educators are similarly divided over freedoms for teachers.

The educational soundness of permitting teachers maximum or limited freedom must also have been debated, as indeed this study will seek primarily to test the educational soundness of Supreme Court decisions concerning the freedoms of speech and association of teachers. We shall also analyze and interpret in detail all such Supreme Court cases since Adler, and prepare guidelines for future judicial directions based on educational criteria. We may finally hope to clarify the controversy over whether or not maximum legal freedom should in fact extend to public school teachers.

We can justify these purposes in terms of Associate Justice William J. Brennan's statement that "law and social justice are inseparable; law is an instrument of social justice."[7] Since law reflects the social conscience of the people, it presumably includes the necessary preconditions to innovate humane institutions and practices to support the welfare of every member of society. Today, constitutional interpretation leaves individuals relatively free to experiment with social and economic

---

[7]William J. Brennan, Jr., "Law as an Instrument of Social Justice," Current Legal Concepts in Education, ed. Lee O. Garber (Philadelphia: University of Pennsylvania Press, 1966), p. 16.

reforms which further social justice; in areas of human rights and liberties, courts are imposing constitutional restraints on government to curtail oppression of the human spirit and an erosion of human dignity.[8] To further these aims of law, especially since freedoms are periodically being violated, educators share the responsibility of all concerned citizens, of keeping law abreast of the changing nature and needs of education. And if they share the responsibility of accurately interpreting and aggressively implementing the law, they must also assume leadership in prescribing the future direction law shall take so that conformity to truth and reason may prevail.

Innumerable books, articles, treatises and research studies deal with the legal aspects of education. Dissertations on the legal aspects of education are primarily reportorial, frequently extracting legal principles from court decisions as guidelines for educational practices and policies. Studying students and teachers, or school district and board of education operations, such investigations very ably and adequately extracted controlling principles of law as important guidelines to educators: they fulfilled the purpose of keeping education informed of its legal limits.[9]

---

[8] Ibid., p. 23.

[9] Lee O. Garber, Yearbook of School Law (Danville, Illinois: The Interstate Printers and Publishers, Inc., 1950). Since 1950, Garber has published annually significant studies in school law.

Similarly, there was no dearth of material which advocated many different purposes and objectives of education. Generally, these purposes were either developed in terms of societal needs or individual needs.

However, no studies were uncovered that definitively assessed the Supreme Court's construction of the First Amendment freedoms of speech and association in terms of educational judgment. It was for just this reason that this dissertation viewed these freedoms involving teachers in relation to the purposes of education. Furthermore, since established legal principles come to control educational policies and practices, it seemed desirable to test the educational soundness of these judicial decisions.

Sources of Data, Procedure, and Method

A general survey of library materials provided the background necessary for this study, beginning with the broad concept that law is an instrument of social justice.[10] As an increasingly important instrument of social engineering, law must continually receive direction from other disciplines which investigate the changing needs of our complex society. Because education is one of the basic institutions in society, measures of the educational soundness of recent judicial decisions and attitudes can offer valuable and pertinent direction to the law-makers.

---

[10]Brennan, op. cit., pp. 15-28.

Sources of Data

To establish the integrity of this investigation, it was necessary first to identify primary and secondary sources of legal information and then to establish that primary sources provide legitimate original data in legal research. The American Digest System,[11] an index to cases, provided the search book to locate and clarify relevant cases. The history and the current status of each case was checked in Shepard's Citation to Court Cases.[12]

Court decisions constitute a large portion of the body of law, with the books that record these judicial decisions called reports or reporters. The National Reporter System[13] provides the quickest access to full reports of all appellate court and United States Supreme Court cases. The entire series of reporters is listed below:

1. The Atlantic Reporter (Atl or A2d): includes Maine, New Hampshire, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware and Maryland.

2. The Northeastern Reporter (NE or NE2d): New York, Massachusetts, Rhode Island, Ohio, Indiana and Illinois.

---

[11] American Digest System (St. Paul, Minnesota: West Publishing Co., 1968).

[12] Shepard's Citation to Cases (Colorado Springs, Colorado: Shepard's Citation, Inc., 1967).

[13] National Reporter System (St. Paul, Minnesota: West Publishing Co., 1967).

3. The Southeastern Reporter (SE or SE2d): Virginia, West Virginia, North Carolina, South Carolina and Georgia.

4. The Southern Reporter (So or So2d): Florida, Alabama, Mississippi and Louisiana.

5. The Southwestern Reporter (SW or SW2d): Kentucky, Tennessee, Missouri, Arkansas and Texas.

6. The Pacific Reporter (P or P2d): Montana, Wyoming, Idaho, Kansas, Colorado, Oklahoma, New Mexico, Utah, Arizona, Nevada, Washington, Oregon, California, Alaska and Hawaii.

7. The Northwestern Reporter (NW or NW2d): Michigan, Wisconsin, Iowa, Minnesota, North Dakota, South Dakota and Nebraska.

8. The Supreme Court Reporter (S. Ct.): United States Supreme Court decisions.

9. The Federal Reporter (F or F2d): United States Court of Appeals decisions.

10. The Federal Supplement (F. Supp. or F. Supp. 2d): United States Court of Claims, United States District Courts and United States Court of Customs decisions.

11. The New York Supplement (NYS or NYS2d): Decisions of all New York courts of record.

12. The California Reporter (Cal. Rptr.): California Supreme Court, District Court of Appeals and Appellate Department of Superior Court decisions.

In addition, United States Supreme Court cases may be read in the Court's official publication, United States Reports.[14] Secondary legal sources aiding this investigation included Corpus Juris Secundum,[15] an encyclopedic restatement of

---

[14] United States Reports (Washington, D. C.: U. S. Government Printing Office, 1968).

[15] Corpus Juris Secundum (New York: American Law Book Co., 1936 ff., 101 volumes).

the entire body of American law, based on all reported cases; The Index to Legal Periodicals;[16] Garber's Yearbook of School Law;[17] and Hamilton's Bi-Weekly School Law Letter.[18]

Two legal authorities substantiated our postulate that primary legal sources do provide legitimate original data for legal research. As Johnson stated in Education Law, laws affecting education stem directly or indirectly from (1) federal and state constitutions adopted by "we the people"; (2) federal and state legislation enacted by legislative bodies; (3) federal and state court decisions rendered by judicial bodies; (4) federal and state rules and regulations and decisions promulgated or rendered by administrative bodies possessing the authority to promulgate or render rules, regulations, or decisions; and (5) federal and state attorneys' general opinions issued after proper request.[19] He reasoned that court decisions are an important source of law because courts interpret

---

[16]The Index to Legal Periodicals (New York: H. W. Wilson Co., 1950).

[17]Garber, op. cit.

[18]Robert R. Hamilton, The Bi-Weekly School Law Letter (Laramie, Wyoming: College of Law, University of Wyoming, 1967).

[19]George M. Johnson, Education Law (East Lansing, Michigan: College of Education, Michigan State University, 1967), p. 15.

and translate constitutional and statutory provisions,[20] and thus, that courts make laws as effectively as legislatures. Alexander and Burke identified essentially identical primary sources of law:[21] both authorities tended to confirm that the case law or judge-made law which served as the primary source of information for this study is indeed a legitimate original source.

Procedure

To initiate legal research into court cases, we employed the systematic method of research outlined by Remmlein.[22] The American Digest System, a series of indexes of cases decided by the courts of the country, provided the titles and location of useful cases, with additional case titled also noted through textual sources; West's Law Finder: A Research Manual for Lawyers[23] provides a detailed account of the methods to employ in using the Digest System and subsequent tools. This investigator then checked the history of these cases in

---

[20] Ibid., p. 20.

[21] Carter Alexander and Arvid J. Burke, How to Locate Educational Information and Data, 4th ed. revised (New York: Bureau of Publications, Teachers College, Columbia University, 1958), p. 306.

[22] Madeline K. Remmlein, School Law (New York: McGraw-Hill Book Co., Inc., 1950), p. 13.

[23] West's Law Finder: A Research Manual for Lawyers (St. Paul, Minnesota: West Publishing Co., 1965).

Shepard's Citations, noting the current status of each case and the presence or absence of subsequent court decisions. Following this, each case selected was read in its entirety in the National Reporter System,[24] and the Corpus Juris Secundum was consulted for clarification of principles of law and of the prevailing rules of law. During this process, the issues involved, the courts' decisions and opinions, and the principles of law invoked were recorded. The method outlined above, sometimes referred to as documentary analysis, is the standard method of research into case law.

The Method

In order to test the decisions of the Supreme Court, we must identify certain broad purposes of education to provide educational criteria, a process requiring professional knowledge regarding the process of education. A panel of professional educators was thought to be the most appropriate source for establishing and validating the relevant purposes of education. Following a review of the educational literature from 1950 to date and of digests of statutory and constitutional provisions for education, the most commonly agreed upon purposes were selected for validation. A jury of experts was employed to validate these purposes as criteria for this study,

[24] Ibid., p. 5.

and to minimize the writer's bias. This jury of twenty-five professional educators was randomly selected from a list of those who had been invited to testify on elementary and secondary matters before the United States Senate and House subcommittees on education.[25] Each panel member was instructed to rate highest those items best exemplifying those purposes of education which depend on the free formulation and expression of ideas. Purposes of education were scored on a five-point scale according to how far each was affected by the exercise of free speech and association. The items that clustered on the higher end and averaged above 3.0 on the five-point scale were selected for criteria to test the educational soundness of the Supreme Court's decisions.[26]

Although a panel of professional educators was most appropriate to establish and validate the purposes of education, analyzing court cases and testing the decisions required a different approach. Legal research into court cases does not involve collecting opinions so much as ascertaining the actual decisions of the courts and judging their probable effects: the extent to which court

---

[25]U. S. House of Representatives, "Hearings on ESEA Amendments of 1966," 89th Congress, 2d Session, April 15 and 16, 1966; "Hearings on ESEA Amendments of 1967," 90th Congress, 1st Session, March 9-20, 1967; U. S. Senate, "Hearings on S. 1125 and S. 1126 of 1967," 90th Congress, 1st Session, May 25 and June 23, 1967.

[26]Appendices A and B.

decisions promote or restrict freedom of speech and association is not susceptible to survey methodology. So a method of reasoning peculiar to the judicial process was employed in order to determine the educational soundness of the Supreme Court's pronouncements. This method, "legal reasoning," was described by Levi thus:

> The basic pattern of legal reasoning is reasoning by example. It is reasoning from case to case. It is a three step process described by the doctrine of precedent in which a description of the final case is made a rule of law and then applied to a next similar situation. The steps are these: Similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case.[27]

Relying on precedent, analogy and syllogism, the court arrives at its decision: beginning with a major premise, and formulating a minor premise where similarities and distinctions are noted, it draws its conclusions. The applicability and validity of this method for educational research was ably demonstrated in Wise's dissertation which tested the thesis: The absence of equal educational opportunity within a state constitutes a denial by that state of the equal protection of its laws.[28]

In considering the problem of whether or not specific Supreme Court decisions on the First Amendment Freedoms of

---

[27]Edward H. Levi, An Introduction to Legal Reasoning (Chicago: The University of Chicago Press, 1948), pp. 1-2.

[28]Arthur E. Wise, "The Constitution and Equality: Wealth, Geography and Educational Opportunity" (unpublished Ph.D. dissertation, Department of Education, University of Chicago, 1967).

speech and association for teachers are educationally sound, a similar line of reasoning was employed. First, we established certain essential purposes of education which depend on freedom of speech, association and thought for their fulfillment; these constitute the major premise upon which the analysis was based. Second, the court cases selected were analyzed to determine whether they furthered or restricted the constitutionally protected freedoms, always considering the stated position of the Supreme Court rather than its correctness. Thus, this analysis could proceed in a straightforward manner without conflicting interpretations, for what the Court actually stated and ruled in each case is essentially unmistakable. Each decision with its accompanying opinions constituted the minor premise of the argument. Finally, logical conclusions followed: to the extent that each Supreme Court decision furthered the constitutional freedoms of speech and association for teachers, it was seen to promote free speech, thought and association upon which certain educational purposes depend. Such a decision, since it facilitated certain educational purposes, was considered educationally sound.

To summarize the legal reasoning that was employed to test whether or not a court decision was educationally sound, a simulated example follows. (1) Educational purpose A is dependent on the teacher's free exercise of

speech and association. (2) The decision in case X which involved a teacher placed restrictive limits on the constitutional freedoms of speech and association. (3) Therefore, the decision restricted the realization of purpose A; hence, it was not an educationally sound decision. Relying on a panel of knowledgeable educators to establish the required purposes of education assured objectivity for the major premise. Presumably there will be little disagreement as to what a court actually says, although disagreements may arise over the implications of a decision; hence, objectivity should obtain for the minor premises. And finally, applying the court's own method of legal reasoning will hopefully provide the necessary objectivity in arriving at logical conclusions regarding educational soundness.

Limitations and Assumptions

The body of school law--which includes constitutional, statutory and court determinations--has inexorably expanded and changed; the courts have continually been interpreting and reinterpreting the United States and state constitutions, through a proliferation of court decisions throughout the many jurisdictions. Since a comprehensive legal treatment of any one subject would involve an overwhelming amount of material, certain restrictions were adopted to keep this study within manageable limits:

1. Only judicial decisions concerning freedom of speech and assembly cases for public education were considered.
2. Only such cases since Adler v. Board of Education of City of New York[29] that were adjudicated at the Supreme Court level were considered, legitimate since Adler marked the turning point for speech and association cases much as Brown v. Board of Education[30] did for equality of educational opportunity, and since the United States Supreme Court is the final arbiter of constitutional freedoms.
3. Legality of the decisions was not questioned, only the educational soundness of the Court's positions.

Several assumptions were required during the process of analyzing court cases as a primary source of law, establishing of a set of educational criteria and judging the educational soundness of judicial decisions and attitudes:

1. Decisions rendered by courts of law are considered primary sources of data for legal research, with the findings therefrom legitimatized.

---

[29] 342 U. S. 485 (1952).

[30] 347 U. S. 483 (1954).

2. Validated educational criteria are taken as legitimate bases for judging judicial decisions.
3. The method of legal reasoning which was used to test the hypothesis, standard legal procedure which is recognized by all legal authorities in construing the law, is assumed to be applicable to educational research.

Definition of Terms

Specialized disciplines require precisely defined terms. So that meanings and interpretations can apply with equal precision throughout this study, the following terms are defined:

Appellant.--A party appealing a decision from one court to a higher court.

Certiorari.--A writ issued by a superior court directing an inferior court to send up for review the records and proceedings in a case. Unlike a trial de novo in which the facts of a case are reviewed anew, certiorari involves only those points of law which were adjudicated by the lower court.

Declaratory judgment.--One which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering that anything be done: no executory process follows, nor is it necessary that an actual wrong should have been done or immediately threatened.

Injunction.--A judicial order requiring a party to take or refrain from some specified action.

Litigation.--Act of prosecuting a suit in a court of law.

Plaintiff.--The party who sues by filing a complaint, sometimes used interchangeably with appellant.

Precedent.--A judicial decision considered as furnishing authority on a similar question of law in a subsequent but similar case.

Remand a case.--To send back to the court where it was tried for further proceedings.

Respondent.--The party who contests an appeal.

Scienter.--Knowingly, i.e., the party knew the circumstances.

Shepardize.--The using of Shepard's Citation to locate similar cases or to determine the history and the existence or lack of subsequent court action on a case, especially useful to avoid the embarrassment of citing as authority cases that no longer prevail.

Organization of Subsequent Chapters

Chapter II reports the purposes of education and their expressed and implied bases; both legal and educational sources are reviewed. Chapter III reports the nature of the constitutional rights of freedom of speech and association in order to provide legal and historical perspectives on these constitutional freedoms. Chapter IV

tests the thesis of this study by analyzing recent Supreme Court decisions concerning the freedoms of speech and association of teachers through the method of legal reasoning. The final chapter summarizes the findings and conclusions through analysis of the cases. Implications for education and recommendations for future judicial decisions are discussed, as well as recommendations for further study.

CHAPTER II

THE PURPOSES OF EDUCATION: EDUCATIONAL AND LEGAL SOURCES

Introduction

This chapter reports various views regarding the purposes of education, from both educational and legal sources, to establish a basis for those which will later constitute the major premise for this study. We shall examine the relationship between the purposes of education and the theoretical bases for these purposes. While it is not our intent to arbitrarily prescribe a set of purposes, we shall necessarily define a comprehensive set of educational purposes which, in toto, characterize the nature of education.

Numerous educational authorities and groups have grappled with the problem of how to formulate the purposes of American education. In view of the orientation of rational behavior toward goals and normative standards, for example, one primary purpose logically involves identifying and clarifying the ends of purposeful behavior: in fact, it would be indeed surprising were the various objectives of instruction and learning not readily

perceptible in every state department, school and classroom. Two broad categories of educational purposes emerged from the review of literature. Some derived from societal conditions, dealing with the needs for maintaining a democratic society or for maintaining individual integrity against the pressures of the society. Other educational purposes derived from the nature and needs of the individual.

Societal Bases

Contemporary developments within our democratic society have greatly influenced the conduct of education; for it requires the constant attention of educators and of all citizens to maintain and develop democratic institutions and conditions of life in response to continued social change.

Science and Technology

Science has not only continued to add to our vast fund of knowledge but has rendered obsolete what were once looked upon as startling new discoveries. Where saving lives formerly dominated the attention of medical researchers, bio-chemists today have even created the beginnings of life forms. Man need no longer rely on fate and evil spirits to explain both normal and abnormal behavior. No longer is a person foredoomed to a life of mediocrity by an unchanging I.Q. Since the time-span for

significant change is now considerably shorter than a human life, intellectual training must prepare an individual to face a variety of conditions during his lifetime.[1] And the nearly geometric accumulation of knowledge which science generates has made life-long learning inescapable: it has been variously estimated that the fund of accumulated knowledge doubled in 1900, 1950 and 1960. The sheer bulk of present knowledge makes mere coverage meaningless; rather we now require "experiences in inquiry rather than a rhetoric of conclusions."[2]

With discoveries of science, technology gave rise to industrialization, and hence inevitably to urbanization as men flocked to the cities in search of jobs and economic opportunity. In 1960, one-sixth of all Americans, or 30 million people, were crammed into the megalopolis between Boston and Washington, with an average density of 700 per square mile.[3] Seven-tenths of the population lived in cities and one-fifth in the five major metropolitan areas of the nation.[4] Halpin related this extreme density to

---

[1]John Childs, Education and Morals (New York: Appleton-Century-Crofts Co., 1950), p. 113.

[2]NEA, The Scholars Look at the Schools, A Report of the Discipline Seminars (Washington, D. C.: NEA, 1961), p. 4.

[3]NEA, Education in a Changing Society (Washington, D. C.: NEA, 1963), p. 76.

[4]Jean Gottman, Megalopolis (New York: Twentieth Century Fund, 1961), p. 27.

education, in the course of interpreting results from several replications with his Organizational Climate Description Questionnaire. He concluded that the schools located in the urban centers of high population density, characterized by "closed climates," were overloaded with students in relation to instructional space, and further labeled the total social and physical milieux of these urban centers as "inhuman and unfit for human habitation." More generally, the sales curve for tranquilizers, the accelerated rate at which alcohol is being consumed, and the increased use of marijuana all attest to modern man's attempts to adapt to a too burdensome environment.[5]

Most recently, the problems of the inner city have been compounded by the loss of human talent and finances as the middle class people migrated to the suburbs. Havighurst offers the concept of "critical ratio" to explain the changes of the 1960's, what he calls the "bursting of the dam":[6] when the proportion of middle class children in school drops below 30 per cent, families consider moving out of the area and new middle class families refuse to fill the void. What typically remains Burgess

---

[5]Andrew Halpin, "Change and Organization Climate," A paper presented at the Governor's Conference on Education (Hawaii: Department of Education, 1965), p. 15.

[6]Robert Havighurst, "Social Class Influences on American Education," Social Forces Influencing American Education, Sixtieth Yearbook of the National Society for the Study of Education (Chicago: University of Chicago Press, 1961), p. 140.

characterizes as zone II or the zone of transition of the central city.[7] Here physical deterioration, poor health, racial segregation, unemployment, family disorganization, delinquency and crime take a heavy toll from the inhabitants. Among youth in these areas, half are neither in school nor employed: of 625,000 unemployed Negroes, for instance, 40 per cent were in the fifteen largest metropolitan areas.[8] School children are not much better off: in a city school survey students in middle class schools, comprising 29 per cent of the total enrollment, accounted for 63 per cent of the talented while students in the lower class schools, comprising 43 per cent of total enrollment, included only 10 per cent of the city's talented school children.[9] Obviously this low achievement of a whole class of youngsters poses great educational problems and represents an enormous waste of human talent.

---

[7]Ernest W. Burgess, "Urban Areas," Chicago: An Experiment in Social Research, ed. T. V. Smith and Leonard White (Chicago: University of Chicago Press, 1959), pp. 114-121.

[8]United States Department of Labor, Bureau of Labor Statistics, Employment and Earnings, XIV, No. 7 (January, 1968), pp. 10-11.

[9]Robert J. Havighurst, "The Urban Lower Class School," A paper presented at the Human Development Symposium, University of Chicago, April 14, 1962 (Chicago: University of Chicago).

Bureaucracy and Individuals

In their quest for efficiency and economic growth, bureaucracies have become larger, pervading more and more of our society. A large proportion of manufactured goods are produced by a small fraction of the largest corporations: those with assets of over $100 million have increased 53 per cent, while the smaller ones have actually decreased in assets.[10] All bureaucratic organizations have some characteristics in common which affect individuals; a fairly rigid structure, clearly defined authority, and standardized sets of duties all call for a high degree of specialization and conformity, with formal procedures generally imposing a measure of impersonality on the individual.

The effects of bureaucracies on individuals bear several implications for education. Specialization evokes demands for highly developed technical skills. And the compartmentalization of specialists raises critical problems of communication and cooperation: to not only get ahead but also protect the self from organizationally imposed impersonality requires a high degree of skill in interpersonal relations. Bureaucratic interest in mass results further tends to mask the importance of individuals and their need for identity and self-esteem.

---

[10]Paul H. Douglas, "The Central Problem of Economic Giantism," Problems of United States Economic Development, vol. 1 (New York: Committee for Economic Development, 1954), p. 99.

Leisure

Scientific and technological advances and increasing bureaucratic efficiency have noticeably affected working time requirements. As statistics based on the work week state, "In 1850 the average male worked sixty-six hours per week; in 1960 he worked fifty-three--forty hours per week; and the number of hours will likely drop to twenty--thirty by 1970."[11] Obviously Americans have more time for leisure than ever before, and this will probably increase even further in a few years. The way the average person spends his leisure time illuminates the educational task ahead; as the expenditures for various leisure activities in 1967 indicate $1.8 billion was spent for spectator recreation, in comparison with $1.5 billion spent for participant activities. By far the highest total consumer expenditure for any form of recreation was for radio and television, $6.0 billion, tending to confirm the findings of a national survey which asked people about their leisure activities: between 53 and 61 per cent of all age groups spent their leisure watching television.[12] Only the teenage group

---

[11] NEA, Education in a Changing Society, p. 50.

[12] Opinion Research Corporation, A Survey for Motion Picture Association of America, Inc., vol. 2 (Princeton, New Jersey: The Corporation, 1957).

indicated that active athletic participation was among the top five leisure activities. But expenditures for books, magazines and newspapers rose from $1.02 billion in 1957 to $4.91 billion by 1968 which, even allowing for inflation, seems to indicate a significant change in general reading habits. Other leisure activities frequently engaged in were visiting, working around the house and yard (teenagers excepted), reading and listening, and pleasure driving.[13] These statistics suggest serious implications. The NEA Project on Instruction stated, "Whether we shall be a society of free men or a mass-dominated community depends on what we make of ourselves through leisure-time activities." The committee concluded that entertainment, do-it-yourself activities, and play are worthy of some attention, but only spiritual, social and intellectual fulfillment which contributes to the creative activity of life is worthy of one's total attention.[14]

International Interdependence

The modern issue of internationalism and interdependence was posed most dramatically by Kelley:

---

[13]U. S. Department of Commerce, Survey of Current Business, Vol. 48, No. 2 (February, 1968), pp. 5-9.

[14]NEA, Education in a Changing Society, pp. 56-57.

> On August 6, 1945, over Hiroshima an era was born in which no man is safe except through the good will of all his fellow man. This calls for a brand of citizenship never before demanded of us.[15]

Here is a threat not of individual death, which is inevitable, but of the death of all mankind. Whether man chooses to live in respect of human rights or in constant conflict and ethnocentrism is the urgent choice thrust upon him with the advent of nuclear capability. Such other features of modern life as instantaneous communication, rapid transportation and mobility of populations, and rising expectations of the "have not" peoples of the world add further urgency to the international scope of citizenship. This last feature U Thant termed the most serious source of world tension today: "the division of the world into rich and poor nations . . . is more real, more lasting, and ultimately more explosive than that between Communists and non-communists."[16] Education may yet provide the necessary knowledge, understanding and good will to make the ideal of one world a reality.

---

[15]Earl Kelley, In Defense of Youth (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1962), pp. 44-45.

[16]U Thant, "Education and International Misunderstanding," Teachers College Record, LXIII (October, 1961), pp. 1-7.

Democratic Values

No discussion of the social bases of education would be complete without clear identification of the ideology which characterizes American society. For a major justification of educational purposes is the value system of the culture. George Counts expressed the truism that "the character of our choices will depend also on our values."[17] And since the society within which we educate is democratic, let us enumerate the values basic to democracy. In American society, democratic values and ideals place the greatest importance on the individual human being: he is the first and foremost value and the object of all political, social and economic institutions. The individual's superior place in American life is enunciated most forcefully in the Declaration of Independence and the Gettysburg Address. Thomas Jefferson declared:

> Governments are instituted among Men, deriving their just powers from the consent of the governed, . . . [and] whenever any Form of Government becomes destructive of these ends, it is the right of the People to alter and abolish it, and to institute new Government, laying its foundation on such principles, and organizing its power in such form, as to them shall seem most likely to effect their Safety and Happiness.

---

[17] George Counts, Education and American Civilization (New York: Columbia University, 1952), p. 217.

Similarly Abraham Lincoln, in consecrating the battlefield at Gettysburg, spoke of a "government of the people, by the people, and for the people."

Of equal importance in American democracy is the ideal that "all men are created equal." For the postulate of equality breeds that pervading sense of fraternity which is indeed the only lasting basis of justice. Where natural endowments obviously vary, we strive at least for equality of opportunity; and in social, political and legal areas, absolute equality should accrue to every citizen. Thus we derive an abiding belief, which has transferred to education, that individuals must have equal opportunities to actualize their unequal potentialities. Regardless of a person's station in society, law and the conventions of society must provide these opportunities equally without discrimination. It is our traditional belief that "every man is precious because he is a man, that because he is himself and no other."[18]

Americans further believe traditionally in the sacredness of civil liberties, the great rights and freedoms expressed in our Bill of Rights. Among these, the freedoms of thought, speech, press, association and religion are vital to the democratic process and to the growth of individuals: these make self-government possible; these are the means by which people are informed and

---

[18] Ibid., p. 222.

inform others, and through which individuals formulate, test and reformulate their beliefs and attitudes.[19]

Closely related to these foregoing values is democracy's faith in man's ability to make rational decisions, a faith rooted in two conditions: an "open society" which constantly confronts the individual with personal decisions, choices and participation in policy making,[20] and the recognition that man is free to seek ever closer approximations of truth.[21] A free, democratic society demands members of intelligence, who are disciplined in mind and spirit, and who can understand and criticize their society. Partly through the influence of science, the American people insist that man's progress validates the quest for truth; this progress which lends credibility to the belief in man's rationality can be observed in the incredibly rich store of knowledge being uncovered about man and his environment.

---

[19]Edward J. Power, Education for American Democracy (New York: McGraw-Hill Book Co., Inc., 1958), pp. 12-13, and George Counts, "Where Are We?" Educational Forum, XXX, No. 4 (1966), pp. 397-406.

[20]Aubrey Haan, Education for the Open Society (Boston: Allyn and Bacon, Inc., 1962), pp. 36-37, and Vivian T. Thayer, The Role of the School in American Society (New York: Dodd, Mead and Co., 1960), p. 21.

[21]Richard Ballou, The Individual and the State; The Modern Challenge to Education (Boston: Beacon Press, 1953), pp. 279-283.

A fifth fundamental value of democracy, the rule of law,[22] can be observed in respect for the rights of others, cooperative relationships, and the peaceful adjustment of differences and/or the basic institutions of society. Laws derive from the rules and procedures that the people freely establish through consensus. Although some in recent times have ignored this value, law still is the indispensable guardian of justice and freedom. The strength of this belief is supported by the fact that, so far in American self-government, no aspirant to public office has been installed by military force.

Counts lists three additional values underlying a democratic society: individual morality, opportunity and responsibility. As he explains them:

> Democracy rests on basic morality or on elementary standards of decency and humanity in all public relations and in the conduct of all public affairs. Indeed, without mutual trust and charity which rest on these virtues society must itself fall into chaos or submit to a regime of brute power.[23]
>
> Democracy rests on individual opportunity and can live only in a mobile and progressive society in which any man can make his way according to his own talents, inclinations and beliefs.[24]
>
> Democracy rests on individual responsibility. In the very nature of the case free men must voluntarily give of their substance for the guarding and the promotion of the common weal. . . . Individual responsibility is the final test of individual liberty.[25]

---

[22] Counts, Education and American Civilization, pp. 282-93.

[23] Ibid., p. 283. [24] Ibid., p. 284. [25] Ibid., p. 284.

We have thus identified the following as basic values of American democracy: respect for the worth and dignity of the individual, the equality of men and opportunities, civil liberties, a faith in man's rationality, the role of law to protect an ordered society, morality in men's relationships with other men, and individual responsibility based on a sense of common brotherhood. Apart from other more specific and proximate values, these generally represent American democratic life fairly and relate closely to the purposes of education.

Needs of Individuals

Beyond societal conditions, the purposes of education are also influenced by individual needs: while society may be the context in and for which education functions, education remains essentially a personal experience. Though we educate for certain societal conditions, the experience is always personal and unique to the self. Beliefs about the nature of man, his needs and the limits of his potential, thus influence the goals of education, and consequently warrant consideration in any discussion of the purposes of education. The following descriptions treat some of the individual factors which shape the purposes of education.

Human Nature: Four Theories

That man is innately evil--"The imagination of man's heart is evil from his youth"[26]--is perhaps the most persistent theory of human nature in Western society, perpetuated by the Protestant ethic. This theory naturally led to intense indoctrination in certain religious and moral beliefs and to coercive prohibition of natural expressions of children, although schools seldom take salvation through indoctrination and punishment as their purpose any more.

That man is essentially good, on the other hand, a theory originating with Rousseau and amplified by Pestalozzi and Froebel, gave rise to Progressive Education.[27] Unobstructed growth based on children's own interests and activities and free expression led to an education that sought to interfere as little as possible with the natural development of youngsters.[28]

That some men are superior to others by natural endowment, the classical position, influenced education's aim of taking superior minds and creating men of high character, body and mind through the study of classics

---

[26]Genesis 8:21.

[27]The history and practice of Progressive Education are treated in detail in Laurence Cremin, The Transformation of the School (New York: Knopf, 1962).

[28]S. Samuel Shermis, Philosophic Foundations of Education (New York: American Book Co., 1967), pp. 205-210.

and through vigorous physical character development. Under this theory, the masses were to be treated to vocational training which would never liberate the mind.[29]

That men are neither good nor evil inherently, our fourth postulate, is summarized well by Karen Horney:

> Making further use of anthropological findings we must recognize that some of our conceptions about human nature are rather naive. Our conception of normality is arrived at by the approval of certain standards of behavior and feeling within a certain group which imposes these standards upon its members. But the standards vary with culture, period, class and sex.[30]

According to this theory, human nature is essentially acquired. Thus we assume that education should develop intelligence so that the student may decide for himself what is good. Since this theory holds that a person is formed by his experiences, education should provide those intellectual and social experiences which are culturally determined. This conception of man looks upon education as an institution to make human growth, maturity and wisdom possible.[31]

---

[29] Ibid., pp. 211-212.

[30] Karen Horney, The Neurotic Personality of Our Times (New York: Norton, 1937), p. 18. This concept of relativism is also authoritatively discussed in Ruth Benedict, Patterns of Culture (Boston: Houghton Mifflin Co., 1934).

[31] Shermis, op. cit., p. 213.

Human Needs

While Fromm recognizes the physiological needs of man, he argues that "the satisfaction of these instinctual needs is not sufficient to make him happy" because of the "uniqueness of the human situation."[32] His analysis of the conditions of man's existence reveals five basic needs:

1. Relatedness--Man's sanity depends on fulfilling his need to relate with other living beings. "This need is behind all phenomena which constitute the whole gamut of intimate human relations, of all passions which are called love in the broadest sense of the word,"[33] the experience of caritas, or caring for somebody or something outside of oneself.
2. Transcendence--Man is not willingly thrown into this world or removed from it--in this respect he is no different from the other creatures of earth. But because he is endowed with reason and imagination, he cannot be content with this accidental and passive role, but needs to rise beyond the role of the creature. This need is evidenced in his creations of art, ideas, or material goods or of destruction when he cannot

---

[32] Eric Fromm, The Sane Society (Greenwich, Connecticut: Fawcett Publications, Inc., 1955), pp. 31-32.

[33] Ibid., p. 36.

so create. "However, the satisfaction of the need to create leads to happiness; destructiveness to suffering, most of all for the destroyer himself."[34]

3. Brotherliness--The psychological longing all share for security, for mothering, is manifested in the needs for help, warmth and protection. Though a mother fixation may become incapacitating, all brotherliness symbolizes the tie between child and mother, and more generally between man and nature. Any break from his roots--whether from nature, mother, clan or country--presents man with problems over what and who he is. To survive his isolation, man needs "to feel rooted in the experience of universal brotherliness."[35]

4. Sense of Identity--Man is the only animal who can say "I." He is aware of individuality of self as distinct from others. Since he can reason and make decisions, he needs to be able to perceive himself as the subject of his actions. If he cannot form a self-concept, he can scarcely remain sane. The emphasis on the dignity and worth of an individual in

---

[34] Ibid., p. 42.

[35] Ibid., p. 61.

American democracy reflects the realization that man needs to know who he is and what he is capable of doing.[36]

5. A Frame of Orientation and Devotion--Since man has reason and imagination, he must also orient himself in the world. He must reason to approach reality. "He has little difficulty acting irrationally, but it is almost impossible for him not to give his action the appearance of reason," no matter how illusory.[37]

These basic needs of man, the need for relatedness, transcendence, rootedness, a sense of identity and a frame of orientation were seen to be results of conditions of the human situation. Since a large part of education is devoted to the development of the individual, some of its efforts are addressed to these needs.

One of the sets of individual needs most often quoted by educators is that postulated by Maslow. His theory of motivation, based on the hierarchy of needs, states that as the lower needs are satisfied the higher needs emerge. It seems self evident that a starving man should be fed before being subjected to a sermon. It also seems logical that a child whose physical or psychological safety is threatened should be reassured and protected before instruction begins. The taxonomy of needs places the

---

[36] Ibid., pp. 62-64. [37] Ibid., p. 65.

physiological needs lowest, including the needs for food, drink and shelter: institutions like the home are responsible for filling these needs. Next are the needs for safety, with psychological safety predominating over physical safety from harm or death. Then in ascending order are the needs for love and a sense of belonging, the need for esteem for others and self, the need to know and understand, the aesthetic needs and the need of self-actualization or self-fulfillment. These psychological needs were discussed in connection with Fromm's work; but the need for self-actualization, which education strives to fill, merits further explanation. This is the highest category among needs where a person can realize his greatest potential. As Maslow puts it: "This tendency may be phrased as the desire to become more and more what one is, to become everything that one is capable of becoming."[38] The fully functioning self is what human beings appear to be striving for when they are free to choose their own directions.[39] Self-actualization has been called by some the need to validate and authenticate the self, to know and feel a deep sense of adequacy about

---

[38]Abraham H. Maslow, Motivation and Personality (New York: Harper and Bros., 1954), pp. 91-92.

[39]Carl Rogers, Client-Centered Therapy: Its Current Implications and Theory (Boston: Houghton Mifflin Co., 1951).

one's efforts and self. It influences the method of instruction as much as it does the selection of purposes.[40]

Purposes of Education

To accomplish anything worthwhile over a sustained period, we must clearly identify specific purposes or goals. Educators are well aware of this need; so it is not surprising to find nearly as many sets of purposes as writers or committees who study education. But this does not imply any lack of agreement of purposes: in fact, there is more unanimity and agreement among numerous studies than one would expect because of the peculiar local character of education. That is, the difficulty is not over purposes but over priorities and methods of realization. Chapter IV will illustrate the clash over methodology quite readily, as we judge the relevance of recent Supreme Court decisions regarding the freedoms of speech and association for teachers over against those purposes of education which depend for their realization upon the teacher's exercise of these freedoms. A few authoritatively derived sets of educational purposes will serve to identify the most important; those purposes that have been selected as criteria to assess the Court's

---

[40] A comprehensive treatment of this third force psychological viewpoint of man, his needs and the implications for teachers is provided by Earl C. Kelley, Carl R. Rogers, Abraham H. Maslow and Arthur Combs in Perceiving, Behaving, Becoming, Washington, D. C.: NEA, 1962.

decisions will be discussed in detail in Chapter IV. It should be evident that most purposes are based on societal conditions, or the needs of individuals, or both. And most groups who have prepared major studies to identify the purposes of education expended much time and effort in explaining and understanding the bases upon which they built their lists.

Seven Cardinal Principles

Perhaps the earliest widely acclaimed listing of the purposes of public education was posited by the NEA in 1918. While these Principles are no longer contemporary, we include them because they have persisted with varying emphasis in most current identifications of purposes. These Principles prescribe adequate provisions for Health, Command of Fundamental Processes, Worthy Home Membership, Vocation, Civic Education, Worthy Use of Leisure and Ethical Character.[41]

Educational Policies Commission

Another generally accepted and often-quoted set of educational purposes was posited by the Educational Policies Commission in 1938.[42] and reaffirmed twenty years later in a

---

[41] United States, Bureau of Education, "Cardinal Principles of Secondary Education," Bulletin 35 (Washington, D. C.: U. S. Government Printing Office, 1918), pp. 5-10.

[42] Educational Policies Commission, Purposes of Education in American Democracy (Washington, D. C.: NEA, 1938), pp. 47-108.

comprehensive study of the behavioral objectives of general education for the high school, a study sponsored by the Russell Sage Foundation, an impressive group of educators representing the NASSP, ETS, AASA, USOE and the ASCD. Four general purposes, each with several behavioral objectives, were studied extensively:

I. Self-Realization

Improving study skills and other work habits
Improving ability to communicate
Competent use of critical thinking and problem-solving process
Applying ethical values
Developing aesthetic and artistic appreciation
Understanding and controlling emotional self
Understanding and controlling physical self
Awareness and use of accepted health and safety solutions
Becoming intellectually able to follow current issues and solutions

II. Human Relationship

Manifesting acceptable family membership
Sustaining friendly contests
Developing competence in small and large, informal and formal group behavior
Adopting social and cultural amenities
Contributing to health and safety in home, school and community
Contributing member of various types of groups

III. Economic Efficiency

Becoming a more efficient worker
Becoming a more intelligent consumer
Preparing to make intelligent vocational choice
Improving economic competency and independence in family, small group and community situations
Contributing member of work groups
Understanding national and international economic principles and interdependence
Recognizing problems of business and labor; sensitivity of uses and abuses of rights

IV. Civic Responsibility

Demonstrating understanding and characteristics of good citizenship--social, political, economic
Attaining perspective on local, national and international affairs
Evidencing support of democratic goals and principles
Supporting efforts to conserve natural and human resources
Becoming able to analyze and evaluate national and world events in light of histories and cultural past[43]

White House Conference on Education

In 1955, 1,800 laymen and educators met in the White House Conference on Education to restate and clarify educational objectives. The Conference decided upon fourteen major objectives of educational development:

Communication skills including language, mathematics and problem-solving skills
Appreciation of the democratic heritage
Knowledge of American institutions, civic rights and responsibilities
Respect for beliefs of others and human values
Ability to think and evaluate constructively and critically
Effective work habits and self discipline
Social competence as a family and community member
Ethical behavior based on moral and spiritual values
Intellectual curiosity and capacity to continue learning
Aesthetic appreciation and self expression in the arts
Physical and mental health
Wise use of leisure
Understanding of the physical world
Understanding of the social world[44]

---

[43]Will French, Behavioral Goals of General Education in High School (New York: Russell Sage Foundation, 1959), pp. 59-65.

[44]"White House Conference on Education, November 28-

In this crystallization of purposes on a national level, representatives from across the country captured the social and individual concerns of the people for schools and teachers.

Statement of the American Association of School Administrators

Most recently, in 1966, the AASA had this to say about the purposes of education:

> What the school is and what it has been since the beginning of public education in this country have been inextricably related to the needs and wants of people. . . . The values which people cherish, the priorities assigned to these values; the theories that hold promise for giving a sense of order, unity and efficiency to what people do; and the cultured climate that prevails at any given time in large measure shape the educational program.[45]

The American Association of School Administrators then discerned the critical needs of the present era, formulating certain imperatives for educational revision. To enable reason to predominate over force, and to develop in everyone whom the school serves the understanding needed for democracy to work better than it has in the past, they listed these imperatives:

December 1, 1955" (Washington, D. C.: U. S. Government Printing Office, 1955), pp. 1-2.

[45]American Association of School Administrators, Imperatives in Education (Washington, D. C.: AASA, 1966), p. 1.

To make urban life rewarding and satisfying

To prepare people for the world of work by providing knowledge of economics, vocational and technical training and skills in learning to learn

To nurture creative talent by developing curiosity, inquiring minds, desire to learn, and growth in the unique and varied talents of each

To strengthen the moral fabric of society by instilling an understanding and commitment to social justice and individual rights and responsibilities

To deal with psychological tensions by becoming conversant with social change and understanding and respecting oneself

To keep democracy working by applying reason and judgment to cultural questions and replacing prejudice with intelligence [Also subsumed under this heading was the development of intellectual abilities and citizenship.]

To make intelligent use of natural resources by learning to respect their natural limits

To work with other peoples of the world for human betterment by learning to respect other cultures and differences in people and attaining a sense of commitment to peace with freedom[46]

Cognitive and Affective Domains

Others have attempted to formulate purposes of education by focusing on the development of the individual, although to be sure, social requirements cannot be ignored because the individual functions within a society. In the cognitive domain Bloom listed knowledge and intellectual skills and abilities as objectives in behavioral

---

[46] Ibid., pp. 165-173.

form, and justified them in terms of the changing society and the individual as a participant and decision maker in democratic living.[47] A few years later this taxonomy was followed by a study in the affective domain[48] because of new knowledge in the behavioral sciences:

> . . . for any major reorganization of actual practices to take place the individual must be able to examine his own feelings and attitudes on the subject, bring them out in the open, see how they compare with feelings and views of others, and move from an intellectual awareness to an actual commitment to the new practice.[49]

Many other noteworthy and provocative statements of educational purposes are available. Recent years have seen a surge of proposals, each describing the single most important purpose of education:

> The purpose which runs through and strengthens all other educational purposes . . . is the development of the ability to think. This is the central purpose to which the school must be oriented if it is to accomplish either its traditional tasks or those newly accentuated by recent changes in the world. . . . [This] is basic to the establishing and preserving of freedom, . . . [and] to further personal and social effectiveness.[50]

---

[47]Benjamin S. Bloom, Taxonomy of Educational Objectives, vol. 1, Cognitive Domain (New York: Longmans, 1956).

[48]David R. Krathwohl, Benjamin S. Bloom, and Bertram B. Masia, Taxonomy of Educational Objectives, Affective Domain, vol. 2 (New York: David McKay Co., Inc., 1966).

[49]Kurt Lewin, "Group Decision in Social Change," Readings in Social Psychology, ed., Theodore M. Newcomb and Eugene Hartley (New York: Holt, 1947), p. 335.

[50]Educational Policies Commission, The Central Purpose of American Education (Washington, D. C.: NEA,

> . . . but still men cheat and steal and kill. The next holocaust or assault on human dignity will be perpetrated by the most educated of all time. The central task, therefore, is to develop men of good will--universal individuals who value mankind as well as self.[51]

Regardless of the different emphases on purposes, no scholar professed that his chosen purpose was the only one. Each attempted to locate a unifying function for public education. The caution against too narrow a specialization at the expense of other noteworthy purposes was best summarized by Shane:

> Changes in the educational climate of the United States have generally reaffirmed devotion to intellectual growth and indicated the school's concern for basic skills, problem-solving ability, and rational thinking. [However], others are worth preserving: improved physical health, mental and emotional well-being, the cultivating of individual talents and ability through equal opportunity, the development of social and economic literacy, the development of moral values, skills in human relations, understanding of the workings of practical democracy, and an awareness of and loyalty to democratic ideals.[52]

1961), p. 12. This central purpose of education has been supported by liberals and traditionalists. See for example: Arthur Bestor, "Education and the American Scene," Education in the Age of Science, ed. Brand Blanshard (New York: Basic Books, Inc., 1959), pp. 57-75; Shermis, op. cit., p. 148 and John H. Fisher, "Functions of Today's School," Nation's Schools, LXIII, No. 4 (January, 1959), 6-9. However, see also Theodore Brameld, "What Is the Central Purpose of American Education?" who states that "the goal of world civilization is paramount." Phi Delta Kappan, XLIII (October, 1961), 12.

[51]John Goodlad, School, Curriculum, and the Individual (Waltham, Massachusetts: Blaisdell Publishing Co., 1966), p. 3.

[52]Harold G. Shane, "Objectives," National Federation Association Journal, LI (September, 1962), 42.

This stance seems reasonable because of the many social and individual needs which must be considered in formulating purposes for education, especially in an open society where universal education is offered for the good of the individual as well as society.

But beyond these educational sources, we should note the purposes of education which were gleaned from legal sources. To what ends has education been directed by the state constitutional conventions? What do the state constitutions say are the purposes of education? What have the courts construed to be the aims of education?

Proceedings of the State Constitutional Conventions

Garber analyzed the proceedings of thirty-seven state constitutional conventions in his study of education as a state function,[53] and listed four major purposes of education which were most often debated and agreed upon by convention delegates. The most often repeated purpose of education was the state's political safety and well-being: education was viewed as a means of insuring the success of the experiment of self government. The success of self government, this argument claims, required that the people be proficient in exercising their

---

[53]Lee O. Garber, Education as a Function of the State (Minneapolis: Educational Test Bureau, 1934).

privileges and responsibilities of citizenship; active and effective participation was the sine qua non of representative government. It is not surprising, therefore, that the early constitutional conventions "repeatedly declared that the safety of the state is dependent upon the use the people make of their rights and privileges and upon the manner in which they perform their duties and obligations."[54] Another common purpose involved promoting the economic welfare of the state, an end considered to require free public, tax-supported schools. Varied but logical arguments were offered for this proposition:

> . . . If the state is to become prosperous, commerce, manufacturing, trade and agriculture must be encouraged. . . . Education makes for the economic well-being of the state by attracting immigrants and capital to the state. . . . Educated labor is much more productive than uneducated labor. And, the cost of government over an educated citizenry is said to be less than that over an uneducated people.[55]

Several delegates felt that various social evils undermined and seriously threatened the state and its citizens, requiring the state to create various agencies to correct them. And many felt that education was a proper agency to eliminate or at least alleviate the social evils that could sap the vitality of the state.[56] Garber observed, furthermore, the development of the individual as a purpose of education was scarcely ever

---

[54] Ibid., p. 4. [55] Ibid., p. 8. [56] Ibid., p. 10.

considered, except as an afterthought. Some delegates felt that free, tax-supported, public schools were a gift from the state to the people, although others were convinced that "the right to an education is inherent in the rights of an individual": these delegates felt "it is the duty of the state to educate individuals for their own welfare as well as for the welfare of the state."[57] Finally, then, education was generally viewed by the constitutional conventions as a tool to achieve the goals of the state, to promote its safety, social welfare and economic well-being; only secondarily was education viewed as promoting the development of the individual.

State Constitutions

More recently, state constitutions have taken to setting forth the purposes of education. These statements generally represent a crystallization of public opinion, as a few representative examples should indicate. An amendment to the Alabama State Constitution states

> . . . but nothing in this Constitution shall be construed as creating or recognizing any right to education . . . , nor, as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.[58]

---

[57] Ibid., p. 11.

[58] Constitution of Alabama, 1901, Amendment CXI, Section 256.

If education came not to serve the protection of the state, then, at least it could not be used to threaten its peace and safety. The Constitution of Arkansas views education broadly as a means to good government, stating that "ingelligence and virtue being the safeguards of liberty and bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of education."[59] The Constitution of Idaho provides for a "uniform and thorough system of public, free common schools to preserve the stability of a republican form of government,"[60] thus establishing as the primary purpose of education perpetuating republican government by improving the education of the people. "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government," Indiana shall establish by law a uniform and free system of public education.[61] And the Constitution of Michigan states, "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[62]

---

[59]Constitution of Arkansas, 1874, Article XIV, Section 1.

[60]Constitution of Idaho, 1889, Article IX, Section 1.

[61]Constitution of Indiana, 1851, Article VIII, Section 1.

[62]Constitution of Michigan, 1964, Article VIII, Section 1.

Whatever their emphasis, in other words, state constitutions typically define education in terms of the welfare of the state.

Judicial Construction

A third source of legal data identifying purposes of education is judicial pronouncements. We shall enumerate just a few examples to demonstrate that, whereas the state courts stressed the general welfare of the state, the United States Supreme Court has dwelt more and more upon the welfare of the individual in interpreting educational purposes.

In a case adjudicating a dispute over voter qualifications in a school district election, the Supreme Court of Illinois stated:

> . . . Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. . . . The Conduct and maintenance of schools by school directors, school trustees, and boards of education is no less "an exercise of the functions vested in those charged with the conduct of government," is no less a part of "the science and art of government," and deals no less with "the organization, regulation and administration of a state" in its internal affairs, than the construction and maintenance of roads by the commissioners of highways; the conduct and maintenance of charitable institutions by the boards of administration; the inspection of factories and the enforcement of the laws for the protection of workmen and in regard to the employment of women and children by the factory inspectors; the performance by industrial boards of the duties imposed upon it by law, and the performance of many others by public officials taken

> from philanthropic or charitable motives, but for the protection, safety and welfare of the state in the interest of good government.[63]

Here, education has been equated with public utility and is to be conducted primarily in the interests of good government. In deciding whether or not the State could legally require uniform textbooks, the Supreme Court of Tennessee stated:

> That the state may establish a uniform system of books to be taught in the schools, which it provides and controls, seems to be a proposition as evident as that it may provide a uniform system of schools, . . .
>
> We are of the opinion that the legislature, under the constitutional provision, may as well establish a uniform system of schools and a uniform administration of them, as it may establish a uniform system of criminal laws and courts to execute them. The object of the criminal law is, by punishment, to deter others from the commission of crimes, and thus preserve the peace, morals, good order, and well-being of society; and the object of the public school system is to prevent crime, by educating the people, and thus, by providing and securing a higher state of intelligence and morals, conserve the peace, good order, and well-being of society.
>
> The prevention of crime, and preservation of good order and peace, is the highest exercise of the police power of the state, whether done by punishing offenders or educating the children.[64]

This typical statement of purposes by a state court stressed the necessity of protection by "preserving good order, peace and the well-being of society." In a case heard before the Supreme Court of New Hampshire, Fogg v.

---

[63] Scown v. Czarnecki, 264 Ill. 305, 313-314; 106 N. E. 276 (1914).

[64] Leeper v. State, 103 Tenn. 500, 516-531; 53 S. W. 962 (1899).

Board of Education, an action for mandamus was brought to compel the State to provide free transportation. The plaintiff argued that compelling a student to attend school extended to him the right to be transported. In ruling against the plaintiff the court reasoned that education is not a privilege or right of the student but rather a requirement for "protecting the state from an ignorant and incompetent citizenship," stating in part that:

> The primary purpose [is] . . . to increase the usefulness and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to the pupils as a duty imposed upon them for the public good. If they do not voluntarily attend the schools provided for them they may be compelled to do so. . . . While most people regard the public schools as the means of great personal advantage to pupils, the fact is too often overlooked that they are governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship.[65]

But in a landmark decision in Brown v. Board of Education of Topeka, the United States Supreme Court held that separate but equal education perpetuates the unsatisfactory concomitants of segregation and violates the equal protection of the law guaranteed under the Fourteenth Amendment. In presenting its opinion, the Court stated the importance and necessity of public education in modern American society:

---

[65] Fogg v. Board of Education, 76 N. H. 296, 299; 82 A. 173 (1912).

> 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. It is required in the performance of our most basic public responsibilities, even service in our armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.[66]

In sharp contrast with the state courts' views of education, the United States Supreme Court firmly stated that the purpose of education is to develop the individual so that he may function efficiently in modern society.

Summary

The purposes of education interact with prior conditions within both society and the individual. Even a cursory examination reveals that purposes, though generally similar from one era to another, do change with changing conditions. As purposes are achieved, of course, they in turn influence society and individuals through rising expectations. The purposes of education also interact with methods of instruction. It only remains for us to specify these relationships more closely and to present a composite list of purposes, from among which we shall

---

[66] Brown v. Board of Education of Topeka, 347 U. S. 483, 493 (1954).

select

Supreme

ation

seeks

relief

both i

influe

social

hope t

studen

Educat

ing bo

better

vidual

the Co

As far

select the criteria for determining the relevance of the Supreme Court decisions in freedom of speech and association cases involving teachers.

In conducting its daily functions, the public school seeks to attain certain aims and objectives. They may be modified with changing conditions, but they always include both individual and social purposes. Education tries to influence the physical, emotional, mental, moral and social development of each personality it touches, in the hope that students will come to exercise their civic, ethical, economic and social responsibilities completely. Education also seeks the improvement of society, developing both the demand and the capability for maintaining a better society. This double goal of education, for individual and social betterment, was expressed lucidly by the Commission on Social Studies:

> Education is concerned with the development of rich and many-sided personalities capable of cooperating in a social order designed to facilitate the creation of the largest number of rich and many-sided personalities.[67]

The famous Harvard Report, General Education in a Free Society, also expressed the dual nature of education:

> The quality of alert and aggressive individualism is essential to good citizenship; and the good society consists of individuals who are independent in outlook and think for themselves while

---

[67] American Historical Association, Commission on Social Studies, Conclusions and Recommendations (New York: Scribner, 1932), p. 31.

Both
democ
with
man's
ships
educa
Commi
herd
the r
ated
life
knowl
develo
vocati
have b
subject
public
the pr
Atomic
living

> also willing to subordinate their individual good to the common good.[68]

Both kinds of purposes are realistic and relevant in a democratic social order, since democracy is concerned both with individuals and their self-fulfillment, and also with man's social conditions and the improvement of his relationships and institutions. It is the legitimate concern of education in America thus to promote diversity, not uniformity; uniqueness, not conformity; individuality, not herd behavior.

Several social conditions have greatly influenced the role of education. Science and technology have generated many discoveries which have profoundly affected the life style of Americans, multiplying the vast fund of knowledge and accelerating the pace of change. Intellectual development, cooperative relationships, ethical behavior, vocational competence and techniques of personal relaxation have become increasingly urgent; nor is just learning the subject adequate any more. Didactic instruction will not suffice: learners must become proficient in discovery and problem solving techniques by actively participating in the process of learning. Another source of urgency, urbanization, has produced intolerable conditions of living for many people, concentrating social ills in the

---

[68] General Education in a Free Society, Report of the Harvard Committee (Cambridge: Harvard University Press, 1945), p. 77.

cities

purpos

--by p

to a p

quate

hood--

poses

issues

unreal

social

assaul

lem o

new in

odern

tize

letter

n nor

nd se

hieve

roble

o long

nform

nage

p

t nar

harac

cities and magnifying their seriousness. Educational purposes which seek to prevent the waste of human talent --by providing the skills and understandings so necessary to a productive and meaningful life, establishing adequate self identities, and developing a sense of brotherhood--become critically important. To keep these purposes viable, teaching must squarely confront the vital issues posed by the urban crisis, with more honesty than unreal textbook lessons provide. And other proliferating social realities too--bureaucracies with their attendant assaults on individuality, increased leisure and the problem of its use, and world problems that necessitate a new internationalism--all call for education to enter the modern world without delay. So the purposes of world citizenship, rationality in approaching social problems, better communication, cooperation, ethical behavior based on moral and spiritual values, and aesthetic appreciation and self expression all receive renewed emphasis. And achieving these purposes requires students to become totally involved in the learning process: teachers can no longer be fountains of knowledge merely disseminating information, but rather facilitators and helpers who encourage and guide self-fulfilling individuals.

Beyond social conditions, beliefs about the nature of man, about his needs and potentialities, have also spurred new formulations of educational purpose. The

current theory of human nature, that man is neither good nor bad, superior or inferior, says that man has unlimited potential for growth, and thus that education does not exhort sinners to repent, but rather seeks to help students realistically experience life and decide questions of goodness for themselves. Both Fromm and Maslow have determined human needs empirically. In Fromm's list, five needs stem from the "uniqueness of the human situation." Because man is endowed with reason and imagination he needs to care for someone or something outside of himself, to create to overcome his accidental existence, to know who he is, to feel secure through love and protection, and to make sense of his place in the environment. Maslow's similar hierarchy involves two sets of needs, the primary or animal needs of food and shelter which are shared by all animate creatures, and the psychological or human needs. Such needs as those for psychological safety, love and belongingness, esteem for self and others, knowledge and understanding, aesthetic enjoyment, and self-fulfillment--all influence the purposes of education and methods of instruction. Thus even socially-determined purposes of education can often be stated in terms of individual behavior outcomes.

We may summarize those purposes of education which are rooted in the individual and society in a composite list. Although it seemed at first as though there were

as many

educati

aims of

more di

aims.

be demo

which

study

as many purposes of education as there are study groups, educators show surprising unanimity concerning the broad aims of education. What seemed differences were probably more different emphases, not disagreements over general aims. This general agreement over education's goals can be demonstrated through the following list of purposes which is a composite of those formulated by several major study groups. Education should:

develop critical thinking--using evidence in problem solving.

develop effective communication and basic skills.

develop creative skills of each student.

maximize discovery and dissemination of the knowledge of human experience.

develop understanding and acceptance of self and others.

develop commitment to ethical values and behavior consistent with those values.

develop enthusiasm and skills for the satisfying and productive use of leisure.

develop consumer and vocational competency.

develop civic responsibility.

promote physical health.

develop enthusiasm and abilities for continued learning.

develop willingness to confront cultural issues.

These were the purposes submitted for a jury of educators to select those that depended heavily on the teachers'

exercise of free speech, association and thought. Those selected later became the educational criteria against which the relevancy of the selected Supreme Court decisions were judged.

CHAPTER III

THE NATURE OF THE FREEDOMS: SPEECH AND ASSOCIATION

Introduction

> Congress shall make no law . . . abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[1]
>
> . . . No State shall make or enforce any law . . . , nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .[2]

This chapter seeks to develop the case for freedom of speech and association by exploring the meaning, the importance, and the origin and development of these individual rights. Our primary concern will be their constitutional background as well as their expansion and limitation through judicial practice. This historical examination should demonstrate the fundamental need for free speech and association among a free people, especially in education. Understanding these freedoms is a necessary preliminary to any educational assessment of

---

[1] Constitution of the United States, Amend. I.

[2] Ibid., Amend. XIV, Section 1.

the United States Supreme Court decisions, such as Chapter IV attempts.

Definition of Freedom of Speech

In its most narrow construction, the freedom of speech means a citizen's unrestricted right of reasoned criticism of his government as he participates in the process of self-government; more broadly construed, it means believing and thinking what one wishes, seeking to influence public opinion, arriving at intelligent choices based on evidence, and testing ideas through unfettered discussion. The freedom of speech thus becomes a means of exchanging truth for error, one of the most fundamental functions of a democratic society. The crux of this broader definition lies in the communication of ideas. Justice Holmes issued the most striking declaration proclaiming this viewpoint, one which has influenced subsequent definitions:

> When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes can safely be carried out. That at any rate is the theory of our Constitution. . . . Every year if not every day we have to wager our salvation upon some prophecy based upon incomplete knowledge. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law abridging the freedom of speech."[3]

---

[3] Abrams v. United States, 250 U. S. 616, 630 (1919).

More recently Supreme Court Justice Douglas in a dissenting opinion expressed this faith of free men, that "when ideas compete in the marketplace for acceptance, full and free discussion exposes the false and they gain few adherents. Full and free discussion even of the ideas we hate encourages the testing of our own prejudices and preconception."[4] Thus the full and free discussion of ideas serves as well to test and clarify one's perceptions. A student of this freedom, Chafee, most aptly summarized the true meaning of freedom of speech thus:

> One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion, for, as Bagehot points out, once force is thrown into the argument, it becomes a matter of chance whether it is thrown on the false side or the true, and truth loses all its natural advantages in the contest.[5]

Finally, freedom of speech never guarantees unbridled license: "Freedom of speech and press does not include the abuse of the power of the tongue or pen, any more than freedom of other action includes an injurious use of one's occupation, business, or property."[6] We shall describe

---

[4] Dennis v. United States, 341 U. S. 494, 584 (1951).

[5] Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, Massachusetts: Harvard University Press, 1948), p. 31.

[6] State v. McKee, 17 Conn. 18, 28 (1900).

various restrictions on this freedom as we examine court-permitted limitations and expansions of free speech in a subsequent section of this chapter.

Need and Importance

The poet John Milton penned one of the most impassioned pleas for freedom of thought and speech in our language, as pertinent today as it was when he wrote it in 1644. His "Aeropagiticas" made the following points:

1. The greatest value of freedom of speech is not to the individual but to the community.

> And though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Therefore, let her and falsehood grapple; whoever knew truth put to the worse in a free and open encounter.

2. New and seemingly strange ideas are usually condemned.

> . . . (I)f it come to prohibiting, there is not ought more likely to be prohibited than truth itself; whose first appearance to our eyes bleared and dimmed with prejudice and customs, is more unsightly and unplausible than many errors. . . .

3. Even though books be censored, there are too many sources of evil for law to be able to shield men from all of them.

> . . . (E)vil manners are as perfectly learned without books a thousand other ways which cannot be stopped. And he who were pleasantly disposed, could not well avoid to liken it to the exploit of the gallant man, who thought to pound up the crows by shutting his pasture gate.

4. The opportunity for the reader to sift good from bad for himself is a valuable part of his education for life.

> Good and evil we know in the field of this world grew up together almost inseparably; and the knowledge of good is so involved and interwoven with the knowledge of evil, and in so many cunning resemblances hardly to be discerned. . . .
> As, therefore, the state of man now is; what wisdom can there be to choose, what continence to forbear without the knowledge of evil? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true wayfaring Christian.[7]

John Stuart Mill, the English philosopher, continued the argument that freedom of expression is necessary to the well-being of mankind. First, any opinion that is silenced or denied full expression may, for all we know, be indeed true. Those who desire to suppress it deny its truth, but they are not infallible or omniscient. Therefore, they are not justified in excluding all others from exercising personal judgments. Second, even though the silenced opinion may be erroneous, it very commonly contains as well some partial truth: and in any event, since the prevailing opinion on any subject seldom portrays the whole truth, only the collision of adverse opinions can generate the remainder of the truth. Third, even if the received opinion be the whole truth, it will be held as a prejudice with little comprehension of its rational

---

[7]John Milton, "Aeropagiticas," 1644, Primer of Intellectual Freedom, ed., Howard Mumford Jones (Cambridge, Massachusetts: Harvard University Press, 1949), pp. 147-171.

basis unless it is vigorously contested. For, fourth, any meaning may be lost as a doctrine turns to dogma and prevents any growth of conviction from reason and experience.[8] Suppression of speech thus denies those who dissent the opportunity both for exchanging error for truth and for clearer perceptions of truth. One who knows not what others reason can scarce understand his own position thoroughly.

In recent times, the freedom of speech has been defended most frequently and vociferously as a necessity for democratic self-government, which is rooted on the premise of the primacy of the people over government. Government organized by the people derives its just powers from the consent of the governed: it is a voluntary compact of the people among themselves, having no other reason for existence but to safeguard the interests of individuals and the society. Its function is not that commonly implied by those in power, to perpetuate itself in disregard of the people. But to attain any voluntary compact, all men must be free to reason and to communicate their thoughts in order that policies may be established for the common good. What is important is not that all men may be able to say anything they want to, but that the representatives may be able to hear and weigh all

---

[8]John Stuart Mill, On Liberty (London: John W. Parker and Son, 1859), pp. 31-98.

thoughts. As Meiklejohn, a respected student of free speech and self-government, put the matter,

> When self-governing men demand freedom of speech they are not saying that every individual has an unalienable right to speak wherever, whenever, or however he chooses. They are saying that the minds of the hearers should hear all of the relevant facts fairly and fully to arrive at wise public decisions. The essential is that not everyone shall speak but that everything worth saying in the process of self-government shall be said. This means that ideas be they unwise, false, or dangerous as they bear on the common good shall be given fair hearing.[9]

Almost by axiom, therefore, freedom of speech becomes a necessity for any true self-government.

In Chapter II, we noted how the rapid change wrought by scientific discoveries and the accumulation of new knowledge has increasingly characterized contemporary society, aggravating its problems and adding new urgency to their solution. Under these conditions, the need is greater than ever for citizens who can treat evidence reflectively and choose from among alternative solutions. For the First Amendment implies "the faith that a good society is not static but advancing, and that the fullest possible interchange of ideas and beliefs is essential to the attainment of this goal."[10] And as Spicer would add,

---

[9] Alexander Meiklejohn, Free Speech and Its Relation to Self-Government (New York: Harper and Brothers, 1948), pp. 24-25.

[10] Feldman v. U. S., 322 U. S. 487, 501 (1944), Douglas dissenting.

the squelching of free interchange of ideas is a denial of progress itself:

> . . . even if it may be argued that there is no sacred right of the individual to speak, write, teach and publish, it can be demonstrated that it is generally helpful to the community to hear what men have to say, to read what they write, and to use what they discover. If these objectives are to be realized, ideas and information must have free access to the open marketplace of thought and communication. . . . The community that is denied the opportunity to this exchange is denied progress. This denial is inimical to democratic life.[11]

Finally, the necessity of freedom of speech in a democratic society can be argued in terms of the basic values underlying society. These values, some discussed at length in the previous chapter, may be arranged in four groups: assuring individual self-fulfillment, advancing knowledge and discovering truth, participating in the process of self-government, and maintaining stability and change in society.[12]

The first category rests on the basic premise that the end of man is to realize his full human potential, a potential arising from the human condition characterized by the power of the mind and the capacity of language. Although,

> . . . the achievement of self-realization commences with development of the mind, the process of conscious thought by its very nature can have no

---

[11]George S. Spicer, The Supreme Court and Fundamental Freedoms (New York: Appleton-Century-Crofts, 1967), p. 2.

[12]Thomas Emerson, "Toward a General Theory of the First Amendment," The Yale Law Journal, LXXII: 5 (April, 1963), p. 877.

> limits. An individual cannot tell where it may lead nor anticipate its end. Moreover, it is an individual process. Every man is influenced by his fellows, dead or living, but his mind is his own and its functioning is necessarily an individual affair.[13]

Since self-realization is an individual process it follows that man has the right to form his own opinions and beliefs, and hence to express these opinions, because expression is part of the development of ideas and self-realization. Thwarting expression of thoughts, beliefs and opinions affronts man's essential nature and restrains the development of human personality unduly.

In a second sense, self-fulfillment is possible only as an individual participates in an ordered society. It is often repeated that man is a social animal. As was stressed earlier, the state exists to serve the interests of the individual. Therefore, there exists the right of an individual to express his thoughts and beliefs as a participating member of society: "to shut off the flow at the source is to dry up the whole stream."[14] For in the search for truth, decisions improve in direct proportion to the number of alternative facts consulted. But even if all the facts are available, human judgment is not infallible, always subject to prejudices and emotions. Though a particular truth may seem unassailable, all options for modification and extension need to be kept

---

[14] Ibid., p. 881.

open. Time often shows that what is accepted now as fact may prove false with the acquisition of greater knowledge. Fallibility of judgment thus dictates that all opinions be permitted free expression. Social judgments reached through common decisions can best meet the welfare of the individual members only if all sides have been given full expression.

A third function of the freedom of speech is facilitating participation in open discussions, the way of arriving at decisions for the common good. The process of self-government, which presumes that all are full members, demands that each opinion be heard while forming common policies. The basis for this value orientation appears in an early utterance by Mill, who proposed that "if all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."[15]

The fourth value category, maintaining stability and change in society, rests on the faith of the American people in settling problems peaceably. By and large, Americans seek to effect changes in society by rational means. Maintaining this balance between stability and

---

[15]John Stuart Mill, On Liberty (London: John W. Parker and Son, 1859), p. 33.

change requires a system of freedom of expression, not a system of suppression by force. For as Bagehot stated, "Persecution in intellectual countries produces a superficial conformity, but also underneath, an intensely incessant, implacable doubt."[16] One who has had his say in persuading others and has freely agreed or disagreed is more likely to accept the common decision, even if it is contrary to his wish. In matters of law, in fact, "when due process has been observed people feel that the decision is legitimate, even if it is not according to one's wish."[17]

Basing the freedom of expression on values offers greater possibilities for rational judgments and adjustments, greater possibilities for maintaining stability and change by permitting everyone his full measure of participation. It makes possible a continuous recycling of facts and errors in arriving at truth and, by encouraging toleration, provides limitless possibilities of self-fulfillment.

---

[16]Walter Bagehot, "The Metaphysical Basis of Toleration," Primer of Intellectual Freedom, ed., Howard Mumford Jones (Cambridge, Massachusetts: Harvard University Press, 1949), p. 91.

[17]Charles Black, The People and the Courts (New York: Macmillan, 1960), p. 52.

Constitutional Origin and Development

The freedoms granted in the First Amendment, which we now assume basic to democracy, were not even in the proposed draft of 1789. In fact according to some constitutional historians, and especially Leonard Levy, individual liberties would never have been included as the Bill of Rights had it not been for political expediency:

> I have been forced to conclude that the generation which adopted the Constitution and the Bill of Rights did not believe in a broad scope for freedom of expression, particularly in the realm of politics. . . . The evidence drawn particularly from the period 1776 to 1791 indicates that the generation that framed the first state declaration of rights and the First Amendment was hardly as libertarian as we have traditionally assumed. They did not intend to give free rein to criticism of the government that might be deemed libel.[18]

The important thing, of course, is that subsequent popular and judicial beliefs have accepted a liberal interpretation of the individual protections afforded by the First Amendment and the whole Bill of Rights. For example, Justice Holmes in Abrams v. United States doubted that the "First Amendment left the common law as to seditious libel in force."[19] Justices Douglas and Black in Beauharnais v. Illinois also believed that the First Amendment struck

---

[18]Leonard W. Levy, Freedom of Speech and Press in Early American History, Legacy of Suppression (New York: Harper and Row, 1963), p. xxi.

[19]250 U. S. 616, 630 (1919).

down the law of seditious libel.[20] And, Chafee, distinguished student of free speech, said that the "First Amendment . . . make(s) further prosecutions for criticisms of government, without any incitement to lawbreaking, forever impossible in the United States of America."[21] But we are moving far ahead of our story.

It was not until late in the Constitutional Convention that the inclusion of a Bill of Rights was proposed. The Federalists, led by Alexander Hamilton, opposed a Bill of Rights, because it pre-supposed that the state might exercise powers not granted by the people which interfered with the rights of individuals: "For why declare that things shall not be done which there is no power do do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"[22] Besides, individual liberties were already protected by some state constitutions and by certain clauses in the proposed draft which forbade a religious test oath and granted immunity in congressional debates.[23]

---

[20] 343 U. S. 250, 272 (1951).

[21] Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, Massachusetts: Harvard University Press, 1948), p. 21.

[22] Alexander Hamilton, "The Federalist, No. 84," The Federalist Papers (New York: Arlington House), pp. 513-14.

[23] Constitution of the United States, Art. I, section 6; Art. VI.

Also, since the Constitution was a sovereign act of "We, The People," why should any written recognition of human rights be necessary?

Nevertheless the plea of delegate Mason, that "It would give great quiet to the people" (initially defeated), finally carried the day.[24] At the insistence of certain states, a Bill of Rights was included at the first session of Congress in exchange for ratification in 1791. The evidence thus suggests that political compromise produced the formal declaration of the Bill of Rights. To reiterate, however, the important thing is the liberal construction that judicial decisions have attached to the First Amendment.

Congress Shall Make No Law . . .

Even while confirming traditionally recognized natural rights, Congress was struggling with the problem of federal usurpation of state powers. For this reason, the Bill of Rights was made to apply to Congress alone. Subsequent attempts sought to make the First Amendment applicable to the states, but the Supreme Court laid this issue neatly to rest in Barron v. Mayor of Baltimore. Chief Justice Marshall writing for the majority stated, "These amendments contain no expression indicating an

---

[24] The Records of the Federal Convention, 1787, ed., Max Farrand (New Haven: Yale University Press, 1937), 4 vols, Vol. 2, p. 587.

intention to apply them to the state governments. This court cannot so apply them."[25] This doctrine was accepted for nearly a hundred years.

Incorporation of the First Amendment

Then in 1925, First Amendment guarantees were extended to grant protection from state impairment. The Court, while upholding a conviction under a state's criminal anarchy law said,

> For present purposes we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgement by Congress . . . are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States.[26]

Here, the Court construed the due process clause of the Fourteenth Amendment, which forbids the states from depriving any person of "life, liberty, and the pursuit of happiness without due process of law," to include freedom of speech and assembly. The dictum was reaffirmed in Whitney v. California,[27] and as well in Fiske v. Kansas[28] where a unanimous Court held that a Kansas criminal syndicalism statute violated the due process clause of

---

[25] 32 U. S. 343, 250 (1833).

[26] Gitlow v. New York, 268 U. S. 652, 666 (1925).

[27] 274 U. S. 357 (1927).

[28] 274 U. S. 380 (1927).

the Fourteenth Amendment because it unconstitutionally restricted the free speech guarantee of the First Amendment. The issue was finally settled in Near v. Minnesota when Chief Justice Hughes stated for the majority, "It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded from invasion by state action."[29]

It is clear today that the Supreme Court may review state legislative and judicial actions concerning the freedoms of speech and association[30] which are protected by the First Amendment. This doctrine is crucial to the present study because most of the freedom of speech and association cases concerning teachers originated through state action. Were it not for the doctrine first pronounced in Gitlow, most of the alleged violations of these freedoms involving teachers could not have been reviewed by the Supreme Court.

Limits of Free Speech

Having seen how the First and Fourteenth Amendments protect against the impairment of individual rights by

---

[29]283 U. S. 697, 707 (1931).

[30]Note: However, freedom of association is not explicitly mentioned in the First Amendment. How it came to be included among the protected freedoms of the First Amendment will be described in pp. 76-79.

federal and state governments, we should define what legal limits on freedom of speech remain. Those limitations which have been admitted by the Court help us understand the scope of this freedom and of the continual struggle of protecting this fundamental freedom: What may a speaker say? How far may he go in speech? At what point may restraints be imposed by government?

It is fairly well agreed among most reasonable people that freedom of speech is not license for anyone to say anything, anywhere, anytime as he pleases. "We can all agree from the very start that there must be some point where the government may step in" to protect society's as well as the individual's interests.[31] On several occasions the Court has approved restrictions on the speaker for the protection of individuals. For example, in Chaplinsky v. New Hampshire[32] the Court upheld the constitutionality of a statute prohibiting a speaker from calling another insulting names in public. Here, the Court ruled that the right to free speech was not absolute at all times under all conditions. Cursing a public officer in public must be subordinate to order and morality. Similarly, let us not imagine that to deny libeling or slandering others or the act of "shouting fire in a

---

[31]Chafee, op. cit., p. 3.

[32]315 U. S. 568 (1942).

crowded theater"[33] is unconstitutional abridgement of free speech.[34]

Numerous cases have required the Court to ascertain the proper balance between the alleged violations of individual rights and the interests of society as a whole. Those restrictions which are designed to promote and preserve the peace and order of the community play a major part in the limitation of free speech. Schenck, for example, by urging resistance to the draft, ran afoul of the Espionage Act of 1917. Here, it was ruled by a unanimous court that words that may have all the effects of force are not protected. Similarly, in Abrams v. United States,[35] a conviction under the Espionage Act of 1918 for distributing pamphlets urging the workers of the world to rise and resist American intervention against the Bolsheviks was upheld by the Court. Then in a case which originated from a violation of a state criminal syndicalism statute, the Court affirmed the conviction of one who published a manifesto advocating the violent overthrow of the government.[36] More recently the Court ruled that urging

---

[33] Schenck v. United States, 249 U. S. 47, 52 (1919).

[34] Restatement of Torts, Vol. 3, sect. 559, 1938.

[35] Abrams v. United States, 250 U. S. 616 (1919).

[36] Gitlow v. New York, 268 U. S. 652 (1925).

and teaching the violent overthrow of the government was not constitutionally protected speech.[37] Also, inciting to riot through public utterance is not protected by freedom of speech and assembly and can be restrained.[38]

But the Court has not always approved of the suppression of speech through criminal syndicalism statutes. In Fiske v. Kansas[39] the Court judged unwarranted the restrictions placed upon speech by a statute which made solicitation of membership unlawful, whenever the state could not prove that the organization advocated any crime. Also, in DeJonge v. Oregon[40] the Court ruled the Oregon criminal syndicalism law an unconstitutional deprivation of the right of free speech and assembly. The conviction of DeJonge was reversed because even though the public meeting was sponsored by the Communist Party, attending and conducting a meeting which involved no teaching or unlawful acts was protected under the First Amendment.

Fundamental questions raised by several other statutes which were designed to promote the peace and order of the community have been fairly well settled by now. For

---

[37] Dennis v. United States, 341 U. S. 494 (1951).

[38] Feiner v. New York, 340 U. S. 315 (1950).

[39] 274 U. S. 380 (1927).

[40] 299 U. S. 353 (1937).

example, requiring permits or licenses to hold meetings in public places,[41] to have parades,[42] or to distribute literature[43] have all been ruled permissible restrictions under the Constitution. The state may also regulate public use of sound amplifying devices to protect public comfort and convenience.[44] Door-to-door solicitation without prior consent of the occupants may also be regulated by ordinance.[45] Picketing as well, if carried on for purposes contrary to law or in a context of violence, is not protected speech and may be enjoined.[46]

A final permissible restriction involves the employment of teachers holding membership in a legally identified subversive organization. The Court ruled that restricting such memberships did not deprive teachers of any right to freedom of speech or assembly.

---

[41] Hague v. CIO, 307 U. S. 496 (1938).

[42] Cox v. New Hampshire, 312 U. S. 569 (1941).

[43] Prince v. Massachusetts, 321 U. S. 158 (1944).

[44] Kovacs v. Cooper, 336 U. S. 77 (1949).

[45] Bread v. Alexandria, 341 U. S. 622 (1951).

[46] Hughes v. Superior Court of California, 339 U. S. 460 (1950) and Cole v. Arkansas, 338 U. S. 345 (1949).

> It is clear that such persons have the right under our laws to assemble, speak, think and believe as they will. . . . It is equally clear that they have no right to work for the state in the school system on their own terms. . . . If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere.[47]

Generally speaking, speech may be constitutionally restricted under circumstances in which the government may require one to speak the whole truth, to avoid disturbing the community, and when the speech is an incitement to criminal conduct. It will become clear in Chapter IV that cases involving teachers most frequently fall into the third category. Such frequency is predictable because the signal characteristic of teachers' work in their search for and dissemination of truth is understanding and formulating new and potentially "dangerous" thoughts.

Judicial Tests and the Limits of Free Speech

No court has ever considered the right of free speech as absolute and therefore above government regulation. Conversely, no court has ever considered that this right has no constitutional protection. Neither absolute in their protecting of all forms of speech, however delivered, nor completely free of necessary restrictions to protect the public welfare and safety, the freedoms of speech and association had to achieve some balance between individual

---

[47] Adler v. Board of Education of New York City, 342 U. S. 485, 492 (1952).

and group interests. Therefore, to guide it in its attempts to strike a proper balance between the allegedly impaired private right and the public interest, the Court has articulated three distinct standards with minor variations. These are:

1. Clear and Present Danger Test--Justice Holmes first set forth this standard for the Court:

> . . . (T)he character of every act depends upon the circumstances in which it was done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature to create a clear and present danger that will bring about the substantive evil that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its efforts that their utterances will not be endured so long as men fight and that no court could regard them as protected by a constitutional right.[48]

This test was further clarified by Justices Holmes and Brandeis in their dissenting opinion in Abrams v. United States[49] and Whitney v. California.[50] Unless speech "so imminently threatens immediate interferences with the lawful and pressing purposes of the law"[51] and the

---

[48] Schenck v. United States, 249 U. S. 47, 52 (1919).

[49] 250 U. S. 616 (1919). [50] 274 U. S. 357 (1927).

[51] Abrams at 628.

"incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion,"[52] speech should not be suppressed by government. Here Justices Holmes and Brandeis attempted to formulate a rule of evidence to keep the applications of espionage and criminal syndicalism statutes within constitutional bounds, to give freedom of expression maximum scope as the law was applied.

Clear and present danger was extended by Judge Learned Hand, whose modification was adopted by the Supreme Court. He reasoned in Dennis v. United States that the courts "must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."[53]

According to the clear and present danger test, the First Amendment protects utterances that seek acceptance via the democratic process of discussion and agreement. If the words have the effect of force they are not protected. Nor are they protected if the evil apprehended is immediate before there is opportunity for full discussion or if the evil is of such gravity, like the violent overthrow of government by the Communists in Dennis, that suppression is necessary to avoid the danger. Obviously the clear and present danger rule symbolizes certain basic beliefs about freedom of speech: (1) that free

---

[52] Whitney at 377. [53] 183 F.2d. 201, 212 (1950).

communication of ideas was philosophically desirable and politically essential to the maintenance of the American system of government; (2) that government might punish men for what they did, but not for what they thought; and (3) that the law might intervene where speech became so entangled with criminal action to be an integral part of that action.[54] But this rule never gained the approval of a unanimous court.

2. Bad Tendency Test--The Court has sometimes permitted the suppression of speech if the utterances could be inferred to produce harm. In Gitlow v. New York, a conviction for publishing a manifesto proclaiming that only a Communist revolution can save humanity from capitalism was sustained. Justice Sanford, speaking for the majority, stated, "If the natural tendency and probable effect was to bring about the substantive evils which the legislative body might prevent," speech could be suppressed.[55] Again, in Whitney v. California the Court was prone to indulge in favor of what the state legislative body declared was unlawful. The dissent succinctly interpreted the test applied by the majority. It stated:

---

[54]Martin Shapiro, Freedom of Speech: The Supreme Court and Judicial Review (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1966), p. 171.

[55]268 U. S. 652, 671 (1925).

> The mere act of assisting in forming a society for teaching syndicalism, of becoming a member of it, or of assembling with others is given the dynamic quality of a crime. There is guilt although the society may not contemplate immediate promulgation of doctrine. Thus the accused is to be punished, not for incitement or conspiracy, but for a step in preparation, which if it threatens the public order at all does so only remotely.[56]

In dealing with such fundamental freedoms as speech and association, the bad tendency test soon was seen to be overly restrictive. It was less favorable to freedom of speech and in direct conflict with clear and present danger. Thus, we see the Court turning to a more exacting standard of balancing individual and public interests.

3. Preferred Status--

> The liberties protected by the First Amendment, and made applicable to the states through the Fourteenth Amendment are so peculiarly important to the maintenance of democratic institutions that they enjoy a preferred status in a scale of constitutional values . . .[57]

This viewpoint was first voiced by Justice Stone when he indicated that "legislation which restricts those political processes" by which undesirable legislation may be repealed should be "subjected to more exacting judicial scrutiny . . . than are most other types of legislation."[58] This

---

[56] 274 U. S. 357, 371 (1927).

[57] Robert E. Cushman, "Civil Liberties," American Political Science Review, XLII (February, 1948), pp. 42-48.

[58] United States v. Carolene Products, 304 U. S. 144, 152 (1938).

position reflects the principle that self-governing powers are reserved for the people. These powers enshrined in the First Amendment are freedom of speech and association in public affairs to effect communication of information and opinion on those issues. They cannot be abridged by the governmental agencies because "over our governing they have no power, but over their governing we have sovereign power."[59] For example, so long as the political process is free, a popular majority today could impose controls and a majority tomorrow could remove such controls. However, if freedom of speech and association are restricted by the legislature, the minority will forever be precluded from ever arguing that improvement is possible.

Subsequently this doctrine has been accepted by a clear majority of the Court.[60] Recently the Court reversed the judgment in a civil suit for $500,000 rendered in favor of the Police Commissioner of Montgomery against the New York Times for allegedly defamatory statements made in a full page advertisement criticizing the Montgomery police's handling of civil rights demonstrators. The Court directed attention to James Madison's views which he

---

[59]Alexander Meiklejohn, "The First Amendment is an Absolute," The Supreme Court Review, 1961, ed., Philip B. Kurland (Chicago: University of Chicago Press, 1961), p. 257.

[60]Schneider v. Irvington, 308 U. S. 149 (1939); West Virginia v. Barnette, 319 U. S. 624 (1943).

expressed in 1798 in supporting its decision. It stated:

> His [Madison's] premise was that the Constitution created a form of government, under which "the people not the government, possess the absolute sovereignty." The structure of the government dispersed power in reflection of the people's distrust of concentrated power, and of power itself at all levels. . . . Earlier, in a debate in the House of Representatives, Madison had said, "If we avert to the nature of Republican Government, we shall find that censorial power is in the people over the Government, and not in the Government over the people.[61]

The same principle was applied in a later case to reverse the conviction of Garrison under Louisiana's criminal defamation statute. Here the District Attorney severely criticized the official conduct of judges for holding a large backlog of cases and hampering his efforts to enforce the vice laws. The Court stated that the First and Fourteenth Amendments embody our

> . . . profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide open, and it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.[62]

It is plain now that in the jurisprudence of the Supreme Court, some rights are more important than others. Among these rights which are enshrined in the First Amendment are thought, speech and association. To protect these rights, the Court will tolerate circumscription

---

[61] The New York Times v. Sullivan, 376 U. S. 254, 274-75 (1964).

[62] Garrison v. Louisiana, 379 U. S. 64, 74-75 (1964).

only where grave and immediate "evil" will follow the persistent speech in question. It will be seen in Chapter IV that these freedoms have indeed been accorded preferred status where the freedoms of speech and association concerning teachers have been restricted by legislation.

Freedom of Association

Freedom of association has been alluded to on several occasions. But it will be obvious to even the most casual reader of the Constitution, especially, the First Amendment, that this freedom is not even mentioned. How can it be constitutionally protected as a First Amendment freedom when it is not enumerated with the other six rights? Has this right been fabricated by the Supreme Court as a judicial amendment of the Constitution? What is this right? Such questions are important to this study for several reasons: some speech cases which were selected for educational review were resolved by the Court on the basis of this freedom. When freedom of speech is discussed in an institutional or organizational context, furthermore, association is invariably involved. And for that matter, the promulgation of ideas and the fostering of beliefs which underlie free speech relate closely to association. We need here to establish a legal basis and understanding of the freedom of association in order to legitimize the selection of

some of the later cases for educational review, without necessarily providing an exhaustive account of this freedom.[63]

Recognized as a Rule of Law

For over a hundred and fifty years, since the ratification of the First Amendment in 1791, its six protected individual rights apparently sufficed. It was not until 1958 that the Supreme Court deemed it necessary to enunciate this freedom unequivocally. In the words of the Court,

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this court has more than once recognized by remarking upon the close nexus of speech and assembly . . .

It continued in this leading case by stating a rule of law:

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.[64]

Justice Harlan added for a unanimous court that

> . . . it is immaterial whether the beliefs sought to be advanced by association pertain to political,

---

[63]Note: For a complete story see Freedom of Association by Charles E. Rice, New York, New York University, 1962. In his study of the potentialities of freedom of association as an individual right, Professor Rice has chosen to discuss this freedom in the context of religious, political, economic and subversive associations. His reason was "because they present most clearly the problem of freedom to associate for the purpose of promulgating ideas, which is a central constitutional issue of our time . . ." (p. xix).

[64]NAACP v. Alabama, 357 U. S. 449, 460 (1958).

> economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.[65]

This issue, of whether a state may compel an organization to disclose its membership list, grew out of the state attorney general's attempt to enforce the Alabama foreign corporations act by enjoining the NAACP from conducting its activities in Alabama. The NAACP, a nonprofit corporation chartered in New York, had never registered as required by the statute. Finally, after several legal manuevers, the state court held the NAACP in civil contempt because it failed to produce the names of all agents and members. When an appeal was entered with the United States Supreme Court, a unanimous Court ruled for the appellant on the grounds that the production order violated due process and freedom of association.

The reasoning employed by the Court is interesting. It took the position that group association enhances effective advocacy of both private and public viewpoints and, therefore, that the freedoms of speech and association are vitally interrelated. The Court noted that on past occasions revelation of NAACP membership had resulted in economic and physical reprisals to the members; clearly this results in undue suppression of the right to foster beliefs which individuals have a right to advocate. In

---

[65] Ibid., p. 460.

the eyes of the Court, the free exercise of this constitutionally protected right of association was to be favored because Alabama had no compelling interest in obtaining the disclosures to determine whether the NAACP was conducting an intrastate business in violation of its foreign corporation registration statute. Thus by selective incorporation, freedom of association was simultaneously recognized as a First Amendment freedom and made applicable to the states. Another fundamental freedom joined those constitutionally protected against federal and state restrictions.

Subsequently, this freedom was secured when the Court ruled in Bates v. Little Rock[66] that the local NAACP could not be made to reveal its membership list as required by a license tax ordinance because there was not sufficient relationship between the list and the determination of whether the association was subject to tax. The Court relied squarely upon its previous decision and its construction of the freedom of association. In reversing the conviction in the state courts, the Supreme Court pointed out that the framers of the Constitution regarded the right of peaceable assembly, like freedom of speech, "to lie at the foundation of a government based upon the consent of an informed citizenry," and that "it is now beyond dispute

---

[66] 361 U. S. 516 (1960).

that freedom of association for the purpose of advancing ideas and grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the states."[67]

This "newly found" freedom, however, is merely the crystallization of what had been latent during the evolution of individual rights, not a will-o-the-wisp nor judicial amendment. It is a substantial right which deserves the full protection of the First Amendment: "no one can doubt, once the question is raised, that where freedom of speech and assembly are found, there also must reside freedom of association."[68]

Judicial Development

We can now see that some past conclusions generally ascribed to other First Amendment freedoms were tacitly based on association. Without resolving the issues settled by these decisions, it is possible to recognize from the language of the Court that freedom of association would eventually be recognized as a basic right.

For example, in Thomas v. Collins, Justice Rutledge speaking for the Court stated:

---

[67] Ibid., pp. 522-23.

[68] Robert V. McKay in the foreward to Charles E. Rice, Freedom of Association (New York: New York University Press, 1962), p. viii.

> It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly. It is not by accident that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances.[69]

Implicit in this statement is the right to associate with others in peaceful fashion for the purpose of free and open discussion on similarly held ideas and beliefs. In a similar situation, the Court held that speech may not be restricted by the mere participation in a meeting sponsored by the Communist Party, thus acknowledging that the act of associating per se is not punishable. Personal culpability in violation of valid laws must be proven:

> If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy . . . they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.[70]

Here the Court not only extended protection from state action to freedom of assembly, but also defined the constitutional protection it is to receive. Implicit in this opinion governing peaceable assembly is the right to associate, i.e., the right to join and become identified

---

[69] 323 U. S. 516, 530 (1945).

[70] DeJonge v. Oregon, 299 U. S. 357, 365 (1937).

with like beliefs. In our system of justice it is held that guilt is personal; when the imposition of punishment can only be justified by relating status to other concededly criminal activity, that association must be substantial to satisfy the concept of personal guilt. "Membership, without more, in an organization engaged in illegal advocacy, has not been recognized by the Court to be such a relationship."[71]

In an earlier case, the associational issue was raised with reference to a criminal syndicalism statute. Justice Brandeis could not agree with the majority that "assembling with a political party, formed to advocate the desirability of a proletarian revolution by mass action at some date necessarily far in the future,"[72] was not protected by the Fourteenth Amendment. This prophetic dissent, which apparently was based on the concept of abstract advocacy and belief, received judicial support in NAACP v. Alabama and subsequent decisions.[73]

---

[71]Esther C. Sweet, Civil Liberties in America (New York: D. Van Nostrand Company, Inc., 1966), p. 93.

[72]Whitney v. California, 274 U. S. 371, 379 (1927).

[73]Note: In Yates v. U. S, 354 U. S. 298 (1957), the Supreme Court reversed the convictions of fourteen California defendants under the Smith Act holding that Congress intended to punish advocacy only of concrete action for the forcible overthrow of government and not mere advocacy of forcible overthrow as an abstract doctrine. Similarly, in Scales v. United States, 367 U. S. 203 (1961) the Court rejected the assertions that the restriction by the Smith Act on freedom of association

Finally, only a few months before the NAACP decision, the Court held invalid on its face a municipal ordinance that made punishable soliciting citizens to become members of a union, organization or society. The decision in that case turned on the freedom of speech. But implied in the right of solicitors to seek members was the right of potential members to learn about and to join the organization, i.e., to associate to communicate ideas and foster beliefs.[74]

The preceding decisions and opinions illustrated that the freedom of association, which was decisively articulated only in NAACP v. Alabama, was the culmination of many past events. It had its roots in the First Amendment and evolved through the expansion of individual rights wherever the freedoms of speech, assembly, religion and petition were treated in organizational contexts. The selected cases conclusively demonstrated that the freedom of association was implicit in each decision and only needed a well-chosen case to realize its full potential as a constitutionally protected fundamental right.

---

violated the First Amendment. Here, the Court upheld the proscription of membership because it reached "only active members having also a guilty knowledge and intent," thereby preventing "a conviction on what otherwise might be regarded as merely an expression of sympathy with the alleged criminal enterprise, unaccompanied by any significant action in its support or any commitment to undertake such action." (at 228).

[74] Staub v. City of Baxley, 355 U. S. 321 (1958).

Limits of Association

Like all other fundamental First Amendment rights, freedom of association is not completely free from governmental restrictions: at times other rights take precedence.

An early case adjudicated by the Supreme Court arose from an ordinance which penalized associations with persons of ill-repute. The New Jersey Gangster Act of 1934 declared a gangster as a person "known to be a member of any gang consisting of two or more persons" and "who has been convicted three or more times." Although the Court ruled that the ordinance violated the due process clause of the Fourteenth Amendment because of vagueness, the decision could very well have been decided on association. While recognizing that associations to commit crime may be prohibited, the Court reasoned that simply associating with unsavory characters is not constitutionally prohibited. Speaking for the majority, Justice Butler stated:

> Our attention has not been called to and we are unable to find, any other statute attempting to make it criminal to be a member of a "gang". . . . The enactment employs the expression "known to be a member". It is ambiguous. There immediately arises the doubt whether actual or putative association is meant.[75]

The Court could have ruled that mere association with criminal or unsavory characters was not punishable because

---

[75] Lanzetta v. New Jersey, 306 U. S. 451, 453 (1939).

it did recognize in this decision that what amounts to conspiracy to commit a crime may be prohibited.

Another area of limitations on association is that of restricting secret societies in schools and colleges. These restrictive statutes and Board of Education rules have been uniformly upheld by the state and federal courts.[76] Generally these limitations have rested on the theory that such societies tend to promote cliques, engender ill-feelings and an undemocratic spirit of caste, and circumscribe the functions of education. In the only case that reached the Supreme Court, Waugh v. Board of Trustees of the University of Mississippi,[77] a statute prohibiting secret societies in all of the state's educational institutions was held not to violate the due process clause of the Fourteenth Amendment. In his ruling for the majority, Justice McKenna observed that the states may have thought that membership in the prohibited societies divided the attention of the students and distracted them from their studies.

Probably the most frequently litigated area of public restriction on association is the control of subversive

---

[76] Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d. 892 (1945); Steele v. Sexton, 253 Mich. 32, 234 N.W. 436 (1931); Bradford v. Board of Education, 18 Cal. App. 19, 121 P. 929 (1912); see also 27 A. L. R. 1074 and 134 A. L. R. 1274 where the question is discussed and further cases are cited.

[77] 237 U. S. 539 (1915).

or Communist organizations. In Dennis v. United States[78] the conviction of eleven top-ranking leaders of the American Communist Party under the Smith Act was upheld by the Supreme Court. Evidently the Government may punish a person for "willfully and knowingly" conspiring to "teach and advocate the overthrow and destruction" of the government by violence.[79] This was a speech decision because of the limitations of certiorari, but certainly overthrowing the Government by force is a substantial enough interest for the Government to limit association as well as speech. This assumption is later supported in Scales v. United States[80] when the Court held enforceable the membership clause of the Smith Act as reaching only active members who have guilty knowledge and intent of violent revolution.

In the area of political and pressure groups, limitations on the associational right of privacy may be imposed by state registration requirements. For example, in United States v. Harriss[81] the Lobbying Act which required registration of everyone who is paid to influence Congress

---

[78] 341 U. S. 494 (1951).

[79] Smith Act, 54 Stat. 671.

[80] 367 U. S. 203 (1961).

[81] 347 U. S. 612 (1954).

was upheld by the Court. Similarly note the three important decisions which struck down the states' right to force production of membership lists on grounds of violating freedom of association.[82] The decisions in NAACP and Bates both rested upon the absence of sufficient connection between membership disclosure and the legislative purpose. In Shelton the means chosen by the legislature to compel disclosure of all associational ties was constitutionally infirm. Apparently, the states may impose limitations upon association if the legislative purpose is of sufficient importance and the means chosen are reasonable in relation to the purpose. Finally the most direct restraint on the right of political association is the Hatch Act which made it unlawful for most employees of the executive branch of the Federal Government to take active part in political management or campaigns.[83] On the basis of public interest in an efficient public service, the Court held the restrictions to be a reasonable preventive device against the evils that may result from political activity on the part of federal employees.[84]

---

[82] NAACP v. Alabama, 357 U. S. 449 (1958); Bates v. Little Rock, 361 U. S. 516 (1960); Shelton v. Tucker, 364 U. S. 479 (1960).

[83] 18 U. S. C. Secs. 118j, 118-1.

[84] United Public Workers v. Mitchell, 338 U. S. 75 (1947).

The right to freely associate with whomever one chooses is universally recognized as fundamental in a democratic society.[85] The Supreme Court has recognized this right as a fundamental First Amendment freedom cognate to the freedoms of speech, assembly and petition. Consequently, the Court has zealously safeguarded this right of Americans to associate in order to communicate, to extend ideas and to foster beliefs. Through its deliberations, the extent and limitations of association have been defined. There is no question but that governments may forbid criminal, immoral or seditious associations, although the reasonableness of the regulation will be scrutinized by the Court: where the public interest outweighs the freedom to associate, proscription is permitted. On the other hand, membership per se or association without unlawful action will be accorded the full protection of the Constitution.

Summary

Speech

The foregoing discussion of the freedom of speech presented definitions and discussed its importance in our democratic society, its constitutional origin and development, and the judicially recognized limits and tests used

---

[85]See Harold J. Laski, "Freedom of Association," Encyclopedia of the Social Sciences, VI (1931), pp. 447-50.

by the Supreme Court to expand and delimit free speech, with the following broad conclusions:

1. Broadly construed, the freedom of speech means unrestricted exchange of ideas in the discovery and spread of truth; its corollary is the unfettered right of believing and thinking what one wishes. It incorporates the faith of free men that full and free discussion will expose the false and make possible an orderly process in self-government.
2. Freedom of speech is undeniably as important to the well-being of the community as to the individual. As long as free men in a free society are to continue to exercise control over the governing processes, they must be free to reason and to communicate their thoughts in the formulation of policies. Meiklejohn aptly concluded, "The minds of the hearers should hear all of the relevant facts fairly and fully to arrive at wise public decisions."[86]
3. Freedom of speech is necessary to facilitate the discovery of truth. Often a new and creative discovery fails to gain acceptance because of

---

[86]Alexander Meiklejohn, Free Speech and Its Relation to Self Government (New York: Harper and Brothers, 1948), p. 24.

perceptual difficulties. Though an opinion may be in error, it often contains some partial truth; and though it may be perceived as true, the prevailing opinion is rarely the whole truth. Stifling free speech thus prevents the development of convictions based on reason and experience.

4. It may even be argued that the denial of freedom of speech is inimical to progress. Both Justice Douglas in Feldman v. United States[87] and Spicer in The Supreme Court and Fundamental Freedoms,[88] for example, declared that full interchange of ideas, beliefs and information is essential to a rapidly changing society.
5. Freedom of speech is a function of the basic values underlying a free society, more effective than force in bringing about self-fulfillment, stability in change, genuine self-government, and rational individual and social judgments.
6. Freedom of speech is constitutionally protected from undue federal and state suppression. Although a First Amendment freedom, it awaited the United States Supreme Court's construction of the due process clause of the Fourteenth

---

[87] 322 U. S. 487, 501 (1944).

[88] Spicer, op. cit., p. 2.

Amendment to protect it from state suppression.

7. Freedom of speech is not, however, license to say anything, anywhere or at anytime. Prior and post restraints have been upheld by the Supreme Court, especially where non-discriminatory statutes were designed to promote the peace and order of the community by reasonable means. No right to free speech can be claimed in libelous or obscene utterances.
8. Freedom of speech may be abridged when words turn to illegal acts or have "all the effects of force": inciting to riot through public utterance is not constitutionally protected. Actively and knowingly advocating the violent overthrow of the government is not protected speech.
9. Speech is constitutionally protected from abridgement for mere membership in a subversive organization or for abstract advocacy of ideas and beliefs. But knowing membership, <u>scienter</u>, of the unlawful aims of an organization and advocating them is not protected speech.
10. Freedom of speech is protected from abridgement by loyalty oaths which are unduly vague.

In general, the Court is inclined to rule for freedom of speech on a preferred basis if "clear and present danger" is not shown to exist as a result of speech, i.e., if the evil that would befall is not immediate and of such gravity that suppression is unnecessary to avoid the danger.

Association

As the Court devotes increasing attention to the right of association, it resembles more and more closely the problem of spelling out the boundaries of other First Amendment freedoms; this right is no more absolute than the others which are enshrined in the First Amendment. Just as free speech ends where sedition or libel begins, the right of association ends where conspiracy to engage in criminal conduct begins. Analogous to the importance of freedom of speech in the development of ideas and beliefs in the public interest is the importance of association in the fostering of ideas and the promulgation of beliefs:

1. Freedom of association is a fundamental constitutional right for the advancement of ideas and beliefs. Most associations are entered into for the propagation of ideas and beliefs. Barring unlawful actions, associations for these purposes are afforded full constitutional protection by the Court.

2. Freedom of association differs distinctly from individual rights because it protects the right to join others in a collective enterprise. The Court has distinguished this from the individual nature of speech and has recognized freedom of association as fundamental and independent of speech.
3. In some cases, association expands the individual rights of members. For example, the individual's exercise of persuasive speech is strengthened through membership in a lawfully recognized group. It is self-evident that individual voices against established institutions are not heard as well as collective voices.
4. Though conclusively recognized only since 1958, freedom of association was always latent in the First Amendment, constituting the real basis for some past decisions which were decided on other First Amendment grounds.
5. This fundamental freedom can be proscribed in the public interests of order and peace, as in restrictions on political activity and subversive activities. The Constitution does not protect those who would destroy the Constitution in order to right a perceived wrong. Logically there can be no freedom of subversive association, for as stated by Mr. Justice Frankfurter

"no government can recognize a right of revolution"[89] and lay itself open to destruction.

6. Penalties may be imposed on members of subversive association only if they are active members who also have guilty knowledge and intent. Thus, although penalties can be imposed for certain associations, scienter is required.
7. There is a constitutional right to join and support political parties and pressure groups, which right is subject to reasonable regulations to insure the orderliness of governmental processes.

In general, the Court is inclined to rule for freedom of association when association is lawfully entered to propagate and advance ideas and beliefs, i.e., if association does not jeopardize public order and peace.

---

[89] Dennis v. United States, 341 U. S. 494, 549 (1951).

CHAPTER IV

FREEDOM OF SPEECH AND ASSOCIATION: THE EDUCATIONAL JUDGMENT

Introduction

First we must review briefly the problem of whether United States Supreme Court decisions on the freedoms of speech and association for teachers restrict or maximize the attainment of certain purposes of education. Then we may state the thesis formally, employing throughout the Supreme Court's own method of reasoning, by precedents and syllogism. Remember that legal reasoning begins with a major premise and proceeds to establish a minor premise. Then as similarities and distinctions are discerned among the conditions surrounding the premises, we deduce logical conclusions. Thus, defining the major premise, those purposes of education known to be dependent on freedom of speech and association, and the minor premises, the Supreme Court's pronouncements on selected speech and association cases, will occupy most of this chapter.

The Problem Reviewed

While students of case law have generally argued just the legal soundness of various decisions, educators

have sought only to extract principles of law from judicial holdings to provide guides to educational practice, thus providing important and useful guidelines for the operation of education.[1] But what is legally correct may not always be educationally sound.

Since 1896, and during the fifty-eight years between Plessy v. Ferguson[2] and Brown v. Board of Education of Topeka,[3] the Supreme Court considered that the Constitution permitted states to provide separate but equal facilities. Although the fact situation concerned railway facilities, the ruling in Plessy regulated all educational facilities as well. Thus, in the first school case construed under this precedent, the Court held that the state need not maintain a high school for Negroes while maintaining one for whites because

> suspending temporarily . . . for economic reasons the high school for colored children [was not] a sufficient reason why the defendant should be restrained by injunction from maintaining an existing high school for white children.[4]

---

[1]Note: See, for example, Lee O. Garber, The Yearbook of School Law (Philadelphia: University of Pennsylvania, 1953-1966) and with E. Edmund Reutter, Jr., The Yearbook of School Law (Danville, Illinois: The Interstate Publishers and Printers, Inc., 1967 to date), especially the sections on Annotated Bibliography on Recent Studies in School Law.

[2]163 U. S. 537 (1896). [3]347 U. S. 483 (1954).

[4]Cumming v. Board of Education, 175 U. S. 528, 544 (1899).

When the Court confronted the issue fifty-eight years later, in the 1954 landmark case, Brown v. Board of Education of Topeka, the question decided in Plessy was directly confronted. Here, the Court examined sociological and psychological evidence of the effects of segregation on the self concept of Negro children and concluded

> . . . that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment.[5]

During successive periods, then, totally opposite holdings were the law of the land according to the Supreme Court's then current construction of the Constitution. Despite disagreements and dissatisfaction, each in turn was judged perfectly valid by the highest court. Hence the importance of the educational question: which decision was most educationally sound and conducive to good education?

The third chapter discussed the importance of freedom of speech and association in preserving self-government, most convincingly argued by Meiklejohn.[6] A relationship between progress and the communication of ideas and

---

[5]347 U. S. at 495.

[6]Alexander Meiklejohn, Free Speech and Its Relation to Self Government (New York: Harper and Brothers, 1948).

beliefs was also established. But in the course of their constitutional histories, the Supreme Court has both expanded and restricted these two freedoms. We must here consider, then, how such restrictive and liberal constructions relate to education. Do various decisions and attitudes of the Court in cases involving teachers exhibit awareness of the purposes of education? Do they hamper or enhance the educational effort and educational purposes?

We shall be less concerned with legality, although correctness is crucial to any proper interpretation of the law, or with how the law directs educational practice, than with the probable impact of speech and association decisions on the processes and ends of education. This concern stems from a deep-seated belief that bold, creative thinking and open, fearless expression of thoughts, ideas and beliefs by teachers are essential in a viable democracy. To the extent that ideas and beliefs, basic to education, are developed and crystallized primarily through language, the freedoms of speech and association need the greatest protection: for as long as the purposes of education depend upon speech and association, restrictions upon teachers will limit their attainment. In short, we propose to test the educational soundness of the Supreme Court's construction of these two freedoms. Considering its past willingness to consider sociological and psychological

data, there is reason to expect that educational data will be considered in the Court's deliberations.

Educational Criteria

Before we may evaluate the Court's position and the educational value of its decisions, it is necessary to establish valid educational norms to serve as our major premise. These criteria will follow the purposes of education analyzed in Chapter II.

To impute credibility to the criteria, this study sought first to standardize the purposes of education as those most often identified, especially by the more recent and major study groups. A list of these purposes was submitted to a group of educational experts randomly selected from among those whose status as educators was established by the United States House and Senate subcommittees on education, i.e., from among those selected to testify on the Elementary and Secondary School Act of 1965 and its Amendment of 1967. Of the twenty-five professors of education, school superintendents, deputy superintendents of curriculum and instruction, principals, and teachers who were polled twenty (80%) responded. And their responses tend to contradict Keppel's and Wilson's contention that one finds as many purposes as people:[7] there was

---

[7]Francis Keppel and Sloan Wilson, "Goals for Our Schools," Saturday Review, XXXVIII (September 3, 1955), pp. 17-18.

considerable unanimity on those purposes which were judged to depend heavily on the teacher's exercise of the freedoms of speech and association. For example, nineteen of twenty rated "to develop critical thinking in using evidence in problem solving" with a top score of 5 and fifteen rated "to develop willingness to confront cultural issues" 5 while four others rated it 4; the low rated items were uniformly rated low. Evidently these educators are well aware of restricting conditions which can prejudice the realization of educational purposes.

The purposes which these experts judged to depend for their attainment on the teacher's exercise of free speech and association are listed below in order of dependency:

		Average Score
1.	To develop critical thinking in using evidence in problem solving	4.9
2.	To develop willingness to confront cultural issues	4.6
3.	To maximize discovery and dissemination of knowledge of human skills	4.6
4.	To develop understanding of self and others	4.6
5.	To develop commitment to ethical values and behavior consistent with those values	4.6
6.	To develop enthusiasm for continued learning	4.35

	Average Score
7. To develop civic responsibility	4.25
8. To develop creative skills of each student	3.7
9. To develop effective communication and basic skills	3.55

Out of the twelve purposes of education most frequently identified by major study groups, furthermore, three-quarters were judged to depend significantly on the freedoms of thought and expression. Apparently the experts agree that much of education depends on the medium of language and, since education is a helping profession, on language which specifically deals with the formulation and testing of ideas and beliefs. In treating values, knowledge, or social conditions and institutions, then, educators must rely on man's distinctly human capabilities of thought and language to manage change to his benefit. Clearly any undue suppression of speech and association can only hinder the development of thought and beliefs and knowledge.

Tentative Propositions

Utilizing the process of legal reasoning, then, we may begin by formulating a simple preliminary syllogism, upon which the validity of our hypothesis rests:

> Freedoms of speech and association are important to education.

Education is important to a democratic society.

Therefore, the freedoms of speech and association are important to a democratic society.

The major premise, asserting the importance of free speech and association to education, was established by the collective judgment of reputable educators, who judged some purposes of education to be more highly dependent on free speech and association than others: freedoms of speech and association were thought to be important in achieving nine of the twelve most frequently identified purposes of education. It is not unreasonable to conclude that freedom of speech and freedom of association are important to education. The second proposition, or minor premise, was demonstrated in Chapter II, which established a number of close links between societal conditions and the purposes of education. The Constitution of Indiana considers "knowledge and learning . . . essential to the preservation of a free government";[8] and the Supreme Court of New Hampshire ruled public schools a "governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship."[9] As the United States Supreme Court pointed out in Brown,[10]

---

[8] Constitution of Indiana, Article 8, Section 1.

[9] Fogg v. Board of Education, 76 N. H. 296, 299, 82A. 173 (1912).

[10] 347 U. S. 483 (1954).

making attendance compulsory and appropriating the major part of revenues of the states both demonstrate the importance we place on education in a democratic society. Thus we conclude that the freedoms of speech and association are indeed important and necessary to a democratic society.

Since constitutional safeguards have indeed been erected to protect these freedoms and have been extended to education, we may proceed to a second syllogism, which generates our hypothesis:

> The freedoms of speech and association are necessary to the attainment of those purposes of education which were validated on pages 114 and 115.
>
> The freedoms of speech and association are protected by decisions of the Supreme Court.
>
> Therefore, the decisions of the Court further the attainment of certain purposes of education.

Whatever decisions and attitudes of the Court provide maximum protection to speech and association will liberate the development of ideas and beliefs through language, thus furthering the purposes of education which were judged to depend significantly on free speech and association. Such rulings of the Court will therefore tend to support the hypothesis.

Statement of the Hypothesis

We may frame our basic thesis as follows: <u>the protection extended to speech and association of teachers by the First Amendment as construed by the Supreme Court is</u>

educationally sound and acceptable. The thesis may be evaluated in terms of its probable educational effects. Through the method of legal reasoning explained in Chapter I, the Court's decisions and opinions may be weighed against those educational purposes which depend on the free exercise of speech and association. Although the Court purportedly rules just on questions of constitutionality, it does try to anticipate the consequences of its decisions. Hence this assumes that the desirability of individual Court rulings can be legitimately evaluated by applying non-legal criteria. There remains only to assess the educational worth of Supreme Court rulings on free speech and association.

There is ample evidence of the Court's position on these freedoms in cases since 1952 which involved teachers.

Analysis of Cases: Freedom of Speech

Adler v. Board of Education[11]

This 1952 case established the Court's concern and awareness of the need to surround speech with maximum protection in order to secure educational ends. The case signaled the end of an era of restrictive governmental controls and the beginning of increasing constitutional

---

[11] 342 U. S. 485 (1952).

protection of speech for teachers to permit the greatest possible fulfillment of the purposes of education.

This case sought to determine the constitutionality of the Feinberg Law and the rules promulgated thereunder, a law requiring the Board of Regents of New York to establish a list of organizations advocating the overthrow of government by force, violence or unlawful means and to disqualify or remove from employment any teacher who was a member of any such organization. The Court ruled that denying employment or removing teachers under the Feinberg Law was not an abridgement of free speech. But even while ruling for the state's right to condition public employment on past conduct, past loyalty and present membership, the Court recognized the dilemma of abridging speech. It said that teachers of the listed organizations "have the right under our law to assemble, think, speak, and believe as they will."[12] However, since a "teacher works in a sensitive area in a schoolroom" where "he shapes the attitudes of young minds towards the society in which they live," the state's "right to screen for employment cannot be doubted." If teachers do not choose to work under the terms laid down by the Board "they are free to retain their beliefs and go elsewhere."[13]

---

[12] American Communication Association v. Douds, 339 U. S. 382, 399 (1949).

[13] 342 U. S. at 493.

Meanwhile the dissent sounded a ringing defense of free speech for teachers and of its importance to education. Beginning with the assumption that the First Amendment sought to guarantee speech and thought free from censorship, the dissenting justices contended that government should not supervise and limit the flow of ideas into the minds of men, and that guilt of disloyalty should be based on overt acts. The effect of such legislation establishing guilt by association "is certain to raise havoc with academic freedom. . . . Fearing condemnation, [teachers] will tend to shrink from any association that stirs controversy. In that manner freedom of expression will be stifled."[14] They likened the effects of such a law to what happens in a police state.

> Where suspicion fills the air and holds scholars in line for their jobs, there can be no exercise of the free intellect. Supiness and dogmatism take the place of inquiry. A "party line" lays hold. . . . A problem can no longer be pursued with impunity to its edges. The teacher is no longer a stimulant to adventurous thinking. . . . (D)iscussion often leaves off where it should begin. (Surveillance) produces standardized thoughts, not the pursuit of truth.[15]

Such stifling of thought and expression for teachers is only too likely to produce a stultifying conformity which will "rob a generation of versatility that has been perhaps our greatest distinction."[16]

---

[14] Ibid., p. 509.

[15] Ibid., pp. 509-510.

[16] Ibid., p. 511.

The majority ruling, upholding the right of school officials to screen employees for fitness and loyalty based on past and present conduct and associates, reflected the attitude that children should be protected from subversive and Communist doctrine. On the other hand the dissenters, viewing the public school as the cradle of democracy, considered the thoughts and beliefs of teachers fully protected from suppression by the First Amendment. To the dissenters, a law which penalized school teachers for their thoughts and associations was odious because it effectively prevented teachers from helping students openly discuss and "pursue problem(s) with impunity to [their] edges."[17]

Keyishian et al. v. The Board of Regents of the University of New York[18]

Fifteen years later in 1967 the Court for all intents and purposes reversed the ruling in Adler. While still recognizing the legitimacy of the state's interest in protecting its schools from subversive influence by determining the suitability and fitness of its teachers, the Court ruled that the "purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved" (citing the principle from Shelton v. Tucker).[19] It opined that

---

[17] Ibid., p. 510. [18] 385 U. S. 589 (1967).

[19] 364 U. S. 479, 488 (1960).

when statutes exercise "over-broad sweep" or where vague, the hazard of substantial impairment of First Amendment rights increases, as teachers indubitably become overly cautious before speaking or joining in any cause. This case served to crystallize the Court's intense feelings about the importance of freedom of speech and association to education: "the classroom is peculiarly the marketplace of ideas." The First Amendment protects academic freedom, they ruled, by repudiating laws that circumscribe "wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues."[20] Laws which enforce any kind of authoritative selection of ideas and a deadening orthodoxy over the teacher contravene the discovery of truth.

Keyishian et al. grew like Adler directly out of the Feinberg Law, which was enacted by the State of New York to keep subversives out of the classroom. But unlike Adler, the appellants in this case brought actions based on vagueness of certain sections of the loyalty law. Section 105, Civil Service Law of New York, subsection 1-a stipulated that no person who by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine of forceful overthrow of government shall be employed by any public education institution. The

---

[20]385 U. S. 589, 603.

Court now ruled that the employment of one who merely advocates the doctrine in the abstract may not be prohibited, since thoughts and beliefs without incitement to unlawful acts are fully protected by the First Amendment. It distinguished between advocating in the abstract the doctrine of forceful overthrow of government and advocacy to participation in such forceful overthrow.

Subsection 1-b required the disqualification of an employee involved with the distribution of written material "containing or advocating, advising or teaching the doctrine of forceful overthrow and who himself advocates, advises, teaches or embraces the duty, necessity or propriety of adopting the doctrine contained therein"; the Court construed this language as well to cover mere expression of belief, giving rise to such absurdities whereby "the librarian (or teacher) who recommends the reading of such materials thereby advocates . . . the propriety of adopting the doctrine contained therein."[21] The administrative memorandum imposing the restrictions further warned employees that immediate action would be taken if the employee wrote or distributed articles, or endorsed speakers who advise, advocate or teach the doctrine of forceful overthrow of government. The court queried, "Since the advocacy of forceful overthrow is separately

---

[21] Ibid., p. 601.

forbidden, [does] the teacher who informs his class about the precepts of Marxism or the Declaration of Independence violate the prohibition?"[22] Noting this defect in the wording of the administrative rules, the Court observed: "It would be a bold teacher who would not stay as far as possible from utterances or acts which might jeopardize his living . . ."[23] Under the New York law no teacher could be sure when bold and honest inquiry and teaching about abstract doctrine will be labeled seditious. The result must be to stifle "that free play of the spirit which all teachers ought especially to cultivate and practice,"[24] all the more probable for the annual review required by the law of every teacher to determine whether his utterance had violated the law. Thus the Court held that the employment of teachers may not be conditioned on statutory provisions that are so vague and over-broad as to include advocacy of abstract ideas: "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected."[25]

---

[22] Ibid., p. 600.

[23] Ibid., p. 601.

[24] Ibid.

[25] Ibid., pp. 605-606.

Pickering v. Board of Education of Township High School District 205, Will County, Illinois[26]

The most recent case involving a teacher which clearly invoked the freedom of speech further expanded the Court's protection of this essential freedom. Here the Court decided for a teacher dismissed for publication of critical comments about the school board and district superintendent: "in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment."[27]

In reversing the state supreme court's decision, the high Court reveals its singular concern for freedom of speech as it affects teachers and education. This teacher had published a letter in the local paper attacking the school board's handling of bond issue proposals and its subsequent allocation of financial resources between the school's educational and athletic programs. The letter also reported the superintendent's alleged efforts to prevent teacher opposition or criticism of the proposed bond issue. While the Illinois Supreme Court rejected the appellant's claim to First Amendment protection on the grounds that, by taking a position as a teacher, he had

---

[26] 36 LW 4495 (1968).

[27] Ibid., pp. 4498-99.

relinquished some of his citizenship rights to freedom of speech, the United States Supreme Court steadfastly ruled that teachers "may not be constitutionally compelled to relinquish freedom of speech that they would otherwise enjoy as citizens."[28]

What is more public than the conduct of public education is difficult to imagine. For in the matter of the operation of public education and the allocation of funds, as the Court stated,

> . . . the question whether a school system requires additional funds is a matter of legitimate public concern on which the judgment of the school administration, including the School Board, cannot in a society that leaves such questions to a popular vote, be taken as conclusive. On such a question free and open debate is vital to informed decision-making by the electorate. Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds alloted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.[29]

The Court recognized the threat of dismissal from public employment as a potent means of inhibiting speech. Denying teachers their First Amendment freedom cannot be based on the hurt feelings of the members of the Board or of administration. Where the public interest requires free and unhindered debate, the full weight of constitutional protection is extended to the public utterances.

---

[28] Ibid., p. 4497. [29] Ibid., p. 4498.

The Court was careful, however, to distinguish the circumstances of this case from other possible circumstances. It would have found differently, for example, had the teacher's public comments violated the need for confidentiality or if public criticism of an immediate superior by a subordinate seriously undermined the effectiveness of the working relationship between them. And also, had the teacher's public statements been so without foundation or unreasonable, questions of his fitness to serve in the classroom could have been raised. But barring such exceptions, the Court rightfully regarded the teacher as a "member of the general public" by extending him full protection for his utterances of public interest.

This decision, in effect, gives the maximum protection of freedom of speech to teachers. It recognizes that "when one must guess what conduct or utterance may lose him his position, one necessarily will steer far wider of the unlawful zone . . ."[30] thus cutting off a valuable source of critical information about the conduct of a most important public undertaking. The chilling effect on education would produce a cadre of teachers divorced from the explosive social realities of today's world. This decision which protects teachers from dismissal for speaking out on public issues may on the other

---

[30] Speiser v. Randall, 375 U. S. 513, 526 (1958).

hand encourage teachers to pursue ideas and to test beliefs which should be explored, to address themselves to such urgent, if controversial, problems as morality, violence, poverty and its effects, and racism. Emboldened by the mantle of free speech, teachers may well think bolder thoughts and speak out for the improvement of education.

Employment Premised on Loyalty Oaths

Since Adler, the Court has effectively struck down many loyalty oaths which inhibited the teacher's free exercise of speech and thought. Disclaimer oaths which were so vague as to preclude a standard of objective judgment and indiscriminately punished the knowing and the innocent alike were uniformly found to violate the First and Fourteenth Amendments. Only a few months after upholding the loyalty oath requirement in Adler, the Court ruled invalid an Oklahoma oath because the element of scienter was lacking. In Wieman v. Updegraff,[31] the Court decided that employment may not be conditioned solely on the basis of organizational membership regardless of knowledge concerning the subversive or communist front nature of the organization. A unanimous Court held that indiscriminately classifying innocent with knowing

---

[31] 344 U. S. 183 (1952).

association in certain organizations offended due process. It reasoned that

> . . . membership may be innocent. [One] may have joined unaware of its activities or purposes. . . . At the time of application, a group itself may be innocent, only later coming under the influence of those who would turn it towards illegitimate ends.[32]

The educational effects of exacting this oath, which stipulated that teachers have not been members of a communist front or subversive organization for the past five years on pain of loss of employment, were eloquently argued. Justice Frankfurter stated:

> Without scienter, this [statute] penalizes the right of association. . . . Such joining is an exercise of the rights of free speech and free inquiry. . . . Such unwarranted inhibition upon the free spirit of teachers has an unmistakable tendency to chill the free play of the spirit which all teachers ought especially to cultivate; it makes for timidity and caution.[33]

> Democracy rests on public opinion. Public opinion is reliable only if it is disciplined and responsible. It can only be if habits of open-mindedness and critical inquiry are acquired in formative years by our citizens. . . . To regard teachers as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task for teachers to foster those habits of open-mindedness and critical inquiry. . . . Teachers must be exemplars of open-mindedness and free inquiry. If conditions don't permit, they cannot be . . . free to inquire, to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom.[34]

---

[32] Ibid., p. 193.

[33] Ibid., p. 195.

[34] Ibid., p. 196.

Although the state has the power to punish disloyal acts, it may not punish speech and thought as distinguished from acts:

> . . . laws which penalize speech and thought of the unorthodox have a way of reaching, ensnaring and silencing more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing or the craven.[35]

In Cramp v. Board of Public Instruction, Orange County, Florida,[36] the Court struck down a state statute requiring public school teachers to disclaim aiding, supporting, advising, counseling or influencing the Communist Party because of its vagueness. A unanimous Court ruled that the statute's vagueness violated due process of law under the Fourteenth Amendment. In reaching its decision the Court questioned the import of the words aid, support, advise, counsel, and influence; teachers who voted for a candidate supported by the Community Party or who supported a cause which the Party supported could be included within the meaning of these terms. Any statute which upon its face, and as authoritatively construed, is so vague as to permit punishment for free political discussion is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

---

[35] Ibid., p. 193.

[36] 368 U. S. 278 (1961).

Although this case was decided under the due process clause of the Fourteenth Amendment, the Court considered as well the effect on freedom of speech of such an indefinitely worded statute:

> The vice of vagueness is further aggravated where the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution. . . . A man may the less be required to act at his peril here because the free dissemination of ideas may be the loser.[37]

Free political discussion or any governmental change which may be obtained by lawful means may not be so stifled.

Then in 1964, in striking down the Washington State loyalty oath requirement, the Court ruled that teachers may not be required to swear to vague, uncertain and overly broad oaths. In Baggett v. Bullitt[38] the Court relied heavily on the precedent in Cramp which forbade laws so vague that men of common intelligence could only guess at the meaning and differ as to their applicability. It determined that the clause in the oath, "and will by precept and example promote respect for the flag and the institutions of the United States and the State of Washington," could conceivably preclude such activities as criticizing and questioning existing laws, customs and social practices, and even advocating the abolishing of

---

[37] Ibid., p. 287. [38] 377 U. S. 362 (1964).

the House Un-American Activities Committee. It also determined that the Washington definition of a subversive person, as "any person who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter, or to assist the overthrow or alteration of the constitutional form of government by revolution, force or violence," could include teachers who teach students who are members of the Communist Party, consult with outstanding scholars from communist countries or support candidates who are endorsed by the Communist Party. To avoid the risk of violating such oaths' indefinite language, conscientious teachers will favor unquestionably safe and acceptable behavior; borrowing from Stromberg v. California, the Court commanded, "Free speech may not be so inhibited."[39]

Perhaps the best proof that the Court was not nit-picking is found in the reason for the dissent by two of the justices. Justices Clark and Harlan saw nothing vague or indeterminate about the oath requirements as they interpreted them to proscribe only the commission of an act of aiding another to commit an act of violent overthrow or alteration of constitutional government. When even eminent legal minds who make final determinations

---

[39]283 U. S. 354, 369 (1931).

on the constitutionality of laws can disagree on the meaning of statutory interpretation, vagueness must obviously be evident. Such an intolerable situation would surely suppress the pursuit of truth because "juries might convict though the teacher did not subscribe to the wrongful aims of the organization."[40]

Finally, in 1967, the Court again ruled against a loyalty oath which was a pre-condition of employment.[41] The Maryland law itself involved a simple disclaimer that one is not now engaged in the attempt to overthrow the government by force or violence. But legislative gloss required teachers to swear or affirm under threat of perjury that they were not engaged in alteration of the government by revolution, force or violence and were not members of organizations engaged in that attempt in one way or another. The Court observed that altering the present form of government by peaceful revolution is explicitly permitted by the Constitution, and that an oath so vague and broad that one can only guess at its meaning will undoubtedly place restraints on conscientious teachers. Teachers thus may come to avoid controversial problems by stifling academic inquiries in favor of safe and conventional thoughts. The Court anticipated such

---

[40] Elfbrandt v. Russell, 384 U. S. 11, 16 (1966).

[41] Whitehill v. Elkins, 389 U. S. 54 (1967).

consequences when it pronounced the dictum that "the continuing surveillance which this type of law places on teachers is hostile to academic freedom."[42]

Academic and Political Thought and Actions of Teachers Presumed Immune

On several occasions legislative and administrative inquiries have been used like loyalty oaths to deny employment to teachers. Generally the state's right to protect the schools from subversive persons was the stated basis for such action. In Sweezy v. State of New Hampshire[43] the Court ruled that holding a teacher in contempt for refusing to answer questions put to him by the State's Attorney General regarding (1) the contents of his lecture and (2) his knowledge of the Progressive Party and its members violated the due process clause of the Fourteenth Amendment. The petitioner had already testified that he was not a Communist, did not advocate violent overthrow of government and had no knowledge of any subversive actions or persons. Holding a witness in contempt for refusing to disclose his academic and political beliefs, ideas and associations, the Court said, denied the freedom of speech granted under the Fourteenth Amendment. While recognizing the right of states to conduct legislative inquiry to root out

---

[42] Ibid., p. 59.

[43] 343 U. S. 234 (1957).

subversion, the Court reasoned that the legislature of New Hampshire had not empowered the Attorney General to secure the type of information that he had sought.

The reasoning of the Court in this case is particularly pertinent to education. Mr. Chief Justice Warren speaking for the Court stated that, particularly in the academic community,

> . . . the exercise of power of compulsory process [must] be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech, . . . and freedom of communication of ideas.[44]

Such a restriction is inimical to education because

> No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always be free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. . . . Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. . . . For society's good--if understanding be an essential need of society--inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible.[45]

Except for exigent and obviously compelling reasons, political power must abstain from intrusion into academic activity. Here we see a clear majority of the Court protecting the rights of liberty through the Fourteenth Amendment. The freedom of speech was given preferred

---

[44] Ibid., p. 245.

[45] Ibid., pp. 250, 261.

status in thus balancing the right of the State to self-protection against the teacher's political and academic freedom. Because of the dire effects on scholarship and on understanding the problems of society, questioning a teacher's political and academic beliefs and ideas must as far as possible be avoided.

But two years later, in Barenblatt v. United States, the Court split 5-4 in favor of government in denying the individual's right to refrain from revealing his Communist affiliations where the question put to one who had been identified positively as a former member of the Party fell within the purview of a legislative committee's investigative function.[46] The Court majority reasoned that since nothing in the investigation showed that the House Un-American Committee attempted to control what was being taught in the classroom, "an educational institution is not a constitutional sanctuary from legislative inquiry into matters that may otherwise be within constitutional legislative domains."[47] It can hardly be argued that treating teachers the same as citizens in the investigation or organizations seeking the violent overthrow of government is an unwarranted encroachment upon their freedom of speech. The power of Congress to investigate and legislate in the field of Communist activity has never been questioned by the Court. The Court

---

[46] 360 U. S. 109 (1959). [47] Ibid., p. 112.

carefully distinguished Barenblatt from Sweezy where inquiry of a teacher who had never been shown to have connections with the Communist Party was directed at the contents of his lecture and his political association with the Progressive Party, a legitimate political party. Evidently the Court guarantees freedom of speech to teachers only if witnesses are not pilloried or if the subordinate interests of the state are not compelling.

Speech was again given full protection in Slochower v. Board of Education of the City of New York,[48] decided for the petitioner on grounds of due process when he was discharged for exercising his Fifth Amendment right not to testify. Although this case was not decided from freedom of speech, any attack on a person's constitutional right to remain silent constitutes as effective a restriction on thought and beliefs as an attack on utterances. Since the teacher was summarily dismissed for invoking his privilege against self-incrimination to avoid answering questions put to him by the United States Internal Security Subcommittee about his alleged Communist affiliations twelve years before, the Court ruled the Board of Education's discharge action invalid. It stated:

---

[48] 350 U. S. 551 (1956).

> Without attacking Slochower's qualifications for his position and apparently with full knowledge of the testimony he had given some 12 years before at the state committee hearing, the Board seized upon his claim of privilege and converted it through the use of section 903 into a conclusive presumption of guilt.[49]

Under the Constitution no inference of guilt is possible from invoking the Fifth Amendment. Such an arbitrary application of the provisions of Section 903 of the Charter of the City of New York would call for the discharge of any teacher, guilty or innocent, who happens to exercise a constitutional right. Subjecting teachers to such sanctions may stifle inquiry and participation, once the constitutional defense of remaining silent is stripped away. No sinister meaning should be imputed to one's exercise of his constitutional right to refuse to testify, and such refusal is not to be taken as equivalent to confession of guilt or conclusive presumption of perjury. This decision effectively protects conscientious teachers who would teach respect for truth according to the dictates of their conscience. This reaffirmation of one's protection against self-incrimination should help teachers to fearlessly uncover and present all relevant facts and pursue knowledge to its farthest reaches.

The last case in this series is difficult to reconcile with the preceding decisions. In Beilan v. Board of

---

[49] Ibid., pp. 558-59.

Education,[50] the Court ruled against a teacher discharged for incompetency because he refused to answer questions put to him by the Superintendent about his alleged Communist activities and affiliations. The Court held that the Board of Education's action did not violate freedom of speech, and cited Adler that the "right and duty of school authorities to screen teachers . . . as to their fitness to maintain the integrity of the schools [as] a part of ordered society":[51] in the words of Garner, the "municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for public service."[52] Ruling that the questions were relevant to the petitioner's fitness to serve as a teacher, the Court reasoned that

> By engaging in teaching in the public schools, petitioner did not give up his right to freedom of belief, speech or association. He did, however, undertake obligations of frankness, candor and cooperation in answering inquiries made of him by his employing Board examining into his fitness to serve it as a public school teacher.[53]

Evidently questioning by school authorities to determine job competency, and subsequent discharge of a teacher for incompetency based on refusal to answer the questions of his superiors which pertain to his fitness, were not

---

[50] 357 U. S. 399 (1958).

[51] 342 U. S. 493 (1952).

[52] 341 U. S. 720 (1951).

[53] Beilan, 357 U. S. 405.

considered inconsistent with the Federal Constitution; in Slochower, on the other hand, the discharge of the teacher was based entirely on testimony before a federal committee which was not investigating job competency.

Several discrepancies, however, are evident between this case and constitutional protection of freedom of speech. First, the teacher was questioned by his Superintendent in June and October of 1952; but it was not until fourteen months later, and only five days after he had pleaded the Fifth Amendment before a federal subcommittee, that he was suspended. In the fourteen-month interval the teacher, tenured for twenty-two years, was given two satisfactory job ratings. If incompetency includes refusing to answer questions of fitness put by an administrative superior, why was Beilan given two satisfactory ratings in the interim? Secondly, the Court ruled in effect that mere refusal to answer questions of Communist association proved the teacher unfit to remain a teacher. Justice Douglas, speaking for the dissent felt that this made one's qualifications rest on matters of belief, not professional competence. And in the preceding cases where dismissals of teachers were reversed by the Court, mere beliefs and associations were ruled immune from state government probing: "Government has no business penalizing a citizen merely for beliefs and associations."[54]

---

[54] Ibid., p. 414.

Liberties guaranteed by the Fourteenth Amendment include the protected freedoms of the First Amendment, among them

> . . . the right to differ from his neighbor, the right to pick and choose the political philosophy that he likes best, the right to associate with whomever he chooses, the right to join the group he prefers, and the privilege of selecting his own path to salvation.[55]

Beilan's discharge, however, was ostensibly based solely on his incompetency, if only for refusing to answer questions pertaining to fitness to teach, not on disloyalty. Still this case must be written off as constituting an undue restriction on teachers' speech because loss of employment resulted from refusal to answer questions of political belief. From his refusal to answer such questions, the most that could be assumed was that the teacher is a Communist.[56] But the Court had said in Wieman v. Updegraff[57] that membership may be innocent. Stringent constitutional safeguards of speech do not preclude the state's right to screen teachers for competency or loyalty. But neither should screening for competency or loyalty encroach upon the constitutionally protected freedoms of speech and association.

---

[55] Ibid., p. 412.

[56] Ibid., p. 414.

[57] 344 U. S. 183 (1952).

Analysis of Cases: Freedom of Association

On the few occasions where teachers have relied on freedom of association to protect their educational status, the Court has invariably given them the full weight of constitutional protection. Evidently good teaching and free and open discussion are considered to depend heavily on the freedom of association.

Compelling Disclosure of All Associations Ruled Unconstitutional

In Shelton et al. v. Tucker et al., the Court considered whether the employment of teachers could be conditioned on the statutory requirement that all organizational associations within the past five years must be disclosed. In its ruling that the statute violated freedom of association, the Court recognized that teachers in Arkansas were without tenure. A requirement of such unlimited and indiscriminate scope would impose legal and social sanctions on teachers, which could only result in timidity and caution detrimental to scholarly endeavors.

The statute in question required teachers to reveal all of their associational ties. Thus, the teacher who had joined an ostracized group, and subsequently severed his ties, could be subjected to embarrassment and castigation for an innocent error. By no stretch of the imagination could it be argued that all associations

might be relevant to teaching competence or fitness: membership in few political, social, professional, avocational or religious groups could have any bearing on occupational competence. More importantly, the attendant fear of intimidation, embarrassment or loss of a livelihood would have "an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice."[58] To avoid displeasing those who control their professional destinies, teachers may even forego inquiry and understanding if it means associating with an unpopular group or person. For these reasons, the state's right to screen teachers for competence and fitness cannot be exercised through such comprehensive interference with associational freedom.

Association May Be Innocent

More recently, in Elfbrandt v. Russell, the Court again protected the freedom of association of an Arizona school teacher who refused to take a loyalty oath because she could not officially have its precise meaning and statutory scope determined.[59] Although the oath was a conventional one with no disclaimer clause, statutory

---

[58] Shelton et al. v. Tucker et al., 364 U. S. 479, 487 (1960).

[59] 348 U. S. 11 (1966).

gloss added the requirement, knowingly and wilfully becomes or remains a member of the Community Party of the United States or its successor or any of its subordinate organizations . . . or any other organization having for one of its purposes the violent overthrow of the government. Therefore, the oath was ruled a violation of freedom of association because it contained no exclusion of association by one who did not subscribe to the organization's unlawful ends.

In Scales v. United States it was recognized that groups may embrace both legal and illegal aims.[60] In Noto v. United States[61] and Aptheker v. Secretary of State[62] the Court ruled that punishing mere membership without considering specific intent to further the unlawful aims of the organization was unconstitutional. This Arizona statute presumed that mere membership is proof of guilt, running the strong risk of prosecuting guiltless behavior through the vagueness of this statute. Were a teacher to join an international scientific organization which proved to be controlled by Communist bloc scientists who are dedicated to the overthrow of American government, the statute's vagueness might result in the teacher's prosecution.[63] Any laws restricting the

---

[60] 367 U. S. 203, 229 (1961). [61] 367 U. S. 290 (1961).

[62] 378 U. S. 500 (1964).

[63] Elfbrandt v. Russell, 92 Ariz. 147, 397 P.2d. 944 (1966).

protected rights of intellectual and political freedom must be "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state."[64]

It has been well established that innocent membership for the purpose of fostering ideas and beliefs lies within the protective mantle of the First and Fourteenth Amendments. Before loyalty regulations can apply, a member's knowledge of organizational purposes is a requirement, a principle previously repeated in Sweezy v. State of New Hampshire[65] where the Court ruled, "A state cannot, in attempting to bar disloyal individuals from its employ, exclude persons solely on the basis of organizational membership, . . ."[66] This principle has been further expanded until now "mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis for exclusion from [teaching]."[67] It reasoned that "men in adhering to a political party or other organization . . . do not subscribe unqualifiedly to all of its platforms or asserted principles."[68]

---

[64] Ibid., 384 U. S. p. 18.

[65] 354 U. S. 234 (1957). [66] Ibid., p. 247.

[67] Keyishian v. The Board of Regents of the University of the State of New York, 385 U. S. 589, 605 (1967).

[68] Ibid., p. 607.

Similarly, in Whitehills v. Elkins[69] the Court reasoned that conscientious teachers are obviously restrained when dismissal is conditioned on mere membership without proof of knowledge of the real aims of the group.

Conclusions

Having first established our major premise and minor premises, we may now propose educational judgments of the Supreme Court cases dealing with freedom of speech and association of teachers since 1952 which we have just surveyed. The credibility of such judgments naturally lies in the truth of the premises, precedents established in earlier portions of this chapter. Education is conducted by the people through state agencies to achieve certain purposes: developing the social, psychological and emotional potentialities of each member of society to the fullest realization. Minimal conditions required for the successful prosecution of these purposes include free speech and association; and the Supreme Court's treatment of these two First Amendment freedoms, perhaps the most fundamental of individual liberties, was thus singled out for judgment.

Out of twelve purposes of education, seven were judged by eminent educators to depend heavily on free speech and association for their attainment. In order

---

[69] 389 U. S. 54 (1967).

for each student to think critically, to address himself to pressing cultural issues, to discover and widely broadcast the knowledge of human skills, to understand himself and others, to behave in concert with ethical values, to discharge his civic responsibilities and to learn how best to learn, teachers must be able to think and discuss their ideas openly and freely. They need to be free to inquire, advocate and test beliefs regarding unpopular and unique ideas without fear of recrimination. They need to throw off the yoke of deadening orthodoxy and to fearlessly and relentlessly pursue truth wherever it may lead. They need, in short, the opportunity to exercise the freedoms of speech and association.

The greater the protection given to these freedoms by the law of the land, the more likely teachers are to exercise them fully. Conversely, restrictions on these freedoms often force teachers into a cautious and timid mold and into hesitant and tentative exercise of free speech and association. In the first case, teachers can become the catalytic agents to the consummation of the purposes of education. In the second, they are hamstrung in seeking the achievement of those educational purposes which depend upon freedom to discover and promulgate truths. The Supreme Court decisions which restrict speech and association tend to adversely affect

educational effort, while those that liberate the exercise of the freedoms of speech and association will maximize the use of these freedoms to achieve the stated goals of education. Clearly, then, the decisions which give maximum protection to freedom of speech and association against governmental suppression best serve the purposes of education.

Free Speech and Association Protected

To the threat of "stifling that free play of spirit which all teachers ought especially to cultivate and practice,"[70] the Court held in Keyishian that employment of teachers may not be conditioned on loyalty oath requirements that are so vague and over-broad to indiscriminately include advocacy of abstract ideas: "the classroom is peculiarly the marketplace of ideas, the First Amendment protects academic freedom by not tolerating laws that cast a pall of orthodoxy over the classroom."[71] Without an individual's scienter or knowledge concerning the unlawful nature of an organization, the Court held, indiscriminately classifying innocent with knowing association in certain associations offends the exercise of free speech and free inquiry through due process.[72] Speech and thoughts, as

---

[70] 385 U. S. p. 601. [71] Ibid., p. 603.

[72] Wieman v. Updegraff, 344 U. S. 183 (1952).

distinguished from acts, are undeniably immune from state action. By way of extending the greatest possible freedom of speech to teachers, the Court reasoned that penalizing speech and thought of the unorthodox often ensnare and silence those for whom the law was not intended. Such general suppression of speech can only circumscribe the purposes of education.

In Cramp,[73] the Court struck down the disclaimer clause of Florida's loyalty oath as a violation of due process, because its vagueness acted to inhibit the exercise of individual freedoms protected by the First Amendment. When the free dissemination of ideas may be in jeopardy, a teacher cannot be required to act at his peril while exercising his freedom of speech. And in Baggett v. Bullitt,[74] the Court similarly ruled that teachers may not be required to swear to vague, uncertain, and overly broad oaths, because the imposition of such oaths will unquestionably coerce the conscientious teacher to behave in an overly safe and "acceptable" manner. Again, the vagueness test was utilized to invalidate Maryland's loyalty oath, the Court reasoning that restraints on teachers through vaguely construed statutes may stifle academic inquiry. According to the command of the Constitution, beliefs and thoughts may not be abridged.

---

[73] 368 U. S. 278 (1961). [74] 377 U. S. 360 (1964).

The infirmity of vagueness also figured prominently in two cases which hinged on freedom of association. In Shelton, the Court ruled that requiring teachers to disclose all organizational associations violated freedom of association. It reasoned that such an indiscriminate and unlimited sweep would impose both legal and social sanctions, forcing teachers to forego inquiry and understanding if it means forming unpopular associations to pursue scholarly endeavors.[75] Freedom of association was again extended constitutional protection in Elfbrandt v. Russell.[76] Here the Court stated that mere membership cannot be taken as proof of guilt. Penalizing the membership in a subversive organization of one who does not subscribe to its unlawful ends is unconstitutional. The Court held that laws which restrict the protected rights of intellectual and political freedoms must be drawn to punish only specific conduct. Other decisions of the Court turning primarily on freedom of speech also have effectively extended the freedom of association to teachers. In these decisions, not only was mere knowing membership put beyond the restrictive powers of the states,[77] but mere membership

---

[75] Shelton v. Tucker, 364 U. S. 479 (1960).

[76] 344 U. S. 11 (1966).

[77] Wieman v. Updegraff, 344 U. S. 183 (1952).

without specific intent became an inadequate constitutional basis to deny employment to teachers.[78]

Where legislative and administrative inquiry restricted freedom of speech, the Court also provided relief. Thus, the Court ruled in Sweezy v. State of New Hampshire[79] that a teacher could not be held in contempt for refusing to answer the State Attorney General regarding the contents of his lectures and his activities in the Progressive Party for such action violated the due process clause of the Fourteenth Amendment. It held that such governmental incursion into academic and political beliefs and ideas denied freedom of speech, and that such an arbitrary exercise of power can only lead to suspicion and distrust among teachers and effectively prevent open inquiry in many fields. Similarly in Slochower,[80] a teacher's dismissal for exercising his Fifth Amendment right was reversed as a denial of due process: under our Constitution no inference of guilt is possible from invoking the Fifth Amendment. By this decision the Court encouraged conscientious teachers to courageously uncover and present all relevant facts and pursue truth without fear of governmental compulsion to divulge unpopular beliefs and ideas.

---

[78] Whitehill v. Elkins, 389 U. S. 54 (1967) and Keyishian v. The Board of Regents, 385 U. S. 589 (1967).

[79] 354 U. S. 234 (1957). [80] 350 U. S. 551 (1956).

Finally, in a case which involved speaking out on issues of public importance, Pickering v. Board of Education,[81] the Court ruled that dismissing a teacher for publishing critical comments about the actions of public officials, the School Board and the Superintendent, barring reckless or wilfull falsehoods, clearly violated his freedom of speech as a citizen. On matters which require public decisions, the teacher must be given the full measure of protection to think and express his beliefs and opinions.

Restrictions on Teachers

Of the few cases that limited teachers' freedom of speech or association, only two may be considered as truly restrictive. In Beilan[82] the Court upheld the dismissal of a teacher for statutory incompetency based on his refusal to answer questions of beliefs put to him by the Superintendent. Evidently, speech and association may be restricted if teachers do not discharge their obligations of frankness, candor, and cooperation in answering questions regarding loyalty and subversive activities which are relevant to fitness for public employment and put to them by the employing boards. Similarly, in Adler,[83] the Court condoned restraints on speech and association

---

[81] 36 LW 4495 (1968). [82] 357 U. S. 399 (1958).

[83] 342 U. S. 485 (1952).

when it ruled that denying employment to teachers who advocate violent overthrow of the government or are knowing members in such organizations did not violate constitutional protection. However, it was seen in subsequent dicisions that where freedom of speech and association are concerned, mere membership without guilty knowledge, or unlawful intent and abstract advocacy provide insufficient cause for restricting these freedoms.

Two other cases went against teachers' challenges but should not be considered to be restraints on the freedoms of speech and association. In Knight et al. v. Board of Regents[84] the Court stated that requiring teachers to execute a straightforward oath which called for supporting the federal and state constitutions and discharging their teaching duties to the best of their abilities did not restrict political or philosophic expression. Requiring teachers to support the institutions that make education possible and to fulfill their professional obligations can hardly be thought to discourage them from freely and fully exercising these freedoms. And in Barenblatt v. United States, the Court ruled that legitimate legislative inquiry into Communism in education, especially of one positively identified as a

---

[84] 390 U. S. 36 (1968).

former member of the Communist Party, does not violate freedom of speech and association.[85] Since nothing in the legislative inquiry showed that the committee attempted to control classroom teaching, the Court felt that restraint on the teacher's exercise of free speech and association was minimal. Thus, in only two out of fourteen recent cases can it be proven that the Court upheld restrictions upon freedom of speech and association where teachers were concerned.

May It Please The Court

The foregoing analysis of speech and association cases involving teachers has shown that the Supreme Court generally favors maximum protection for these fundamental freedoms; where it could have weighed the balance in favor of the security of the state, it instead chose to tip the scales in favor of free speech and association. As far as teachers and education are concerned, the Court's recent decisions have clearly bestowed preferred status on these freedoms. The favorable decisions permit teachers the greatest reasonable opportunity to exercise these rights. Thus teachers may, without fear of conviction, loss of employment, or governmental harrassment, think, inquire, pursue knowledge, and communicate the products of these activities to students, and thus

---

[85] 360 U. S. 109 (1959).

generate in students a thirst for knowledge, a genuine sense of involvement in their education and a willingness to test common beliefs and established truths. These decisions forcefully advance those educational purposes which depend upon the teacher's exercise of free speech and association.

Therefore we may accept the hypothesis, the protection extended to speech and association of teachers by the First Amendment as construed by the Court is educationally sound and acceptable. May it please the Court, its deliberations on the freedoms of speech and association of teachers deserve the strongest approval and heartiest endorsement from education. Based on such compelling precedents in which teachers were granted the greatest reasonable opportunities to express these freedoms, today's teachers may without fear of conviction lead students towards the full development of their intellectual resources.

CHAPTER V

SUMMARY AND RECOMMENDATIONS

The Study Reviewed

This study examined whether the United States Supreme Court's construction of the freedoms of speech and association, which are enshrined in the First and Fourteenth Amendments, was friendly or adverse to educational efforts. In prosecuting this evaluation, the Court's own method of legal reasoning was utilized. Essentially, this consisted of determining valid educational precedents to establish the major premise, reliably reporting the Court's decisions and opinions as minor premises, and finally drawing logical conclusions from these premises.

Educational Purposes: The Democratic Society and the Individual

The close relationship and importance of education to our democratic society and to individual development impose certain preconditions on education. Obviously good education must seek to preserve and improve societal conditions which are compatible with man's growth and which best meet the needs of individuals. Whether carried

on in groups or individually, learning is always an individual process. Thus a list was established of the purposes of education which were compatible with a democratic society and man's individual development.

Education Dependent on Freedom of Speech and Association

A panel of eminent educators established the major premise conclusively, that free speech and association are singularly important to the formulation and open promulgation of ideas and beliefs. Of the twelve purposes of education most frequently identified by major study groups, nine were judged to depend on the teacher's free exercise of speech and association, and seven judged to be almost wholly dependent on free speech and association. Thus few purposes of education may be realized if speech and association are circumscribed by governmental action.

Ideas and language are absolutely essential in the process of educating youngsters, no matter what the subject matter: citizenship, mathematics, art, attitude development, inquiry, or studies of one's physical and social environment. As a uniquely human institution, education is primarily involved with ideas conveyed through verbal communication. Whether in disseminating the accumulated knowledge of mankind, in applying these to the solution

of problems or to generating new knowledge and understandings, or in creating and championing new ideas, language and its contents dominate the educational process. By their emphasis on the formulation and promulgation of ideas and beliefs, educators exhibit their awareness of the necessity of free speech and association to education.

Thus, we established that permitting teachers the fullest possible freedom of speech and association was necessary to achieve most of the purposes of education. Whatever constrains the realization of these purposes can be adjudged to be unfavorable and contrary to the educational effort.

The Court's Position

Next we must establish the Supreme Court's decisions as minor premises, through examining speech and association cases involving teachers. Accuracy in interpreting the holdings of the Court was imperative because educational judgment was passed on them. Ascertaining the Court's position by reporting the decisions and reasoning in the Court's own words whenever possible and authenticating the issues and rulings limited the possibility of misrepresentation. The Court's position, so established, offers incontrovertible evidence of whether or not the Court fully supported teachers in fulfilling the purposes of education.

The Findings and Conclusions

Beyond any doubt, the Court is more liberal and permissive than the state governments and school boards where the free speech and association of teachers are concerned. Where states and school boards as employers inclined more to prosecute teachers for unorthodox views and beliefs, the Supreme Court placed more stringent curbs on incursions into First Amendment freedoms.

The analysis began with Adler, where the Court permitted substantial restrictions on freedom of speech, and returned full circle in 1968 with Pickering, which provided teachers with maximum protection. In Adler the Court ruled that membership in an organization which advocated violent overthrow of government was prima facie evidence of unfitness for public school teaching, holding that conditioning employment on such a requirement did not violate freedom of speech. The threat of discrimination as a consequence of this decision was soon recognized as a restricting force on teachers: the freedom of speech is so important to education that it must not be so quickly circumscribed, as the Court unequivocally decided in Pickering. Here the Court ruled that a teacher's exercise of his right to freely speak on public issues may not be made the basis of his discharge, in effect freeing teachers from fear of conviction for thinking, teaching and speaking out on issues of public interest.

The fact that one is a teacher may not be used to deny him the constitutional rights due a citizen.

In the interim between these two cases, the Court has invested the freedoms of speech and association of teachers with the greatest possible protection by pronouncing several doctrines of constitutional law. Of fourteen cases examined, such doctrines were invoked in ten to grant teachers the freedom to pursue the ends of education. We may list these doctrines as follows:

1. While there can be no doubt of the state's interest in protecting its educational system from subversion, that purpose cannot be pursued by means that "stifle the free play of the spirit which all teachers ought especially to cultivate," when the end can be more narrowly achieved.[1]
2. Vague restrictions cannot be tolerated, since the Court cannot determine the potential effect of vague wording on conscientious teachers:[2] the transcendant importance of academic freedom cannot permit laws that cast a pall of orthodoxy over the classroom.[3] First Amendment freedoms need breathing space to survive;[4] when

---

[1] Keyishian v. The Board of Regents of the University of New York, 385 U. S. 589, 602.

[2] Ibid., p. 599. [3] Ibid., p. 603. [4] Ibid., p. 604.

teachers must guess what conduct or utterance may lose them their position, substantial limits are imposed on the exercise of First Amendment rights. What is being permitted or proscribed must therefore be clearly stated.[5]

3. Mere knowing membership without specific intent to further the unlawful aims of an organization is not an adequate reason for dismissal of a teacher.[6] For indiscriminate classification of innocent with knowing association in subversive organizations offends due process[7] and freedom of association.[8] To compel a teacher to disclose every associational tie is to impair his right of free association.[9]

4. The guaranty of liberty in the Fourteenth Amendment is violated when a statute, as authoritatively construed, is so vague and indefinite as to permit punishment of fair use of opportunity for free political discussion.[10]

---

[5] Ibid., p. 604. [6] Ibid., pp. 609-10.

[7] Wieman v. Updegraff, 344 U. S. 183, 191.

[8] Elfbrandt v. Russell, 384 U. S. 11, 16.

[9] Shelton v. Tucker, 364 U. S. 479, 485-86.

[10] Cramp v. Board of Public Instruction, 368 U. S. 278, 288.

5. The state may not require one to choose between subscribing to an unduly vague and broad oath, when to do so incurs the likelihood of prosecution, and conscientiously refusing to take an oath with consequent loss of employment and professional status, particularly where free dissemination of ideas may be the loser.[11]

6. A statute controlling the protected rights of intellectual and political freedom must specifically define the conduct to be punished as constituting a clear and present danger to substantial interests of the state.[12]

7. The First Amendment protects controversial as well as conventional dialogue, at the state as well as the federal level, and extends to advocacy and debate.[13]

8. Questioning a teacher by a state attorney general concerning the contents of his lecture or knowledge of a political party, and convicting him for contempt for refusing to

---

[11] Baggett v. Bullitt, 377 U. S. 362, 374.

[12] Elfbrandt v. Russell, 384 U. S. 11, 18.

[13] Whitehills v. Elkins, 389 U. S. 54, 57.

answer, are invasions of academic and political freedom.[14]

9. A teacher must comply with reasonable, lawful and nondiscriminatory requirements laid down by proper authorities.[15] But dismissal of a teacher for refusing to answer questions unrelated to his teaching duties violates due process.[16]

10. Refusal to testify under the Fifth Amendment is not to be taken as equivalent to confession of guilt of presumption or perjury.[17]

Despite the overwhelming number of decisions and commanding reasons which protect teachers against conviction for daring to courageously and openly exercise their freedoms of speech and association and to exercise intellectual integrity, a few cases restricted speech. But not only were these restrictions the exceptions, they were narrowly construed. In Adler restriction on free speech took the form of dismissal on the basis of membership in an organization that advocated violent overthrow

---

[14] Sweezy v. New Hampshire, 354 U. S. 234, 235-67.

[15] Slochower v. Board, 350 U. S. 551, 555.

[16] Ibid., p. 559.

[17] Ibid., p. 557.

of government. Subsequent decisions ruling against innocent membership and the vice of vagueness, however, all but negated this restriction. In another decision, free speech and association were restricted when the Court upheld the dismissal of a teacher who refused to answer questions of fitness put to him by his administrative superior.[18] Clearly if teachers do not discharge their obligations of frankness, cooperation and candor in answering questions of fitness they may be discharged.

Another possible restriction permitted by the Court required teachers to swear allegiance to the federal and state constitutions and to promise to discharge their teaching duties to the best of their abilities.[19] Although neither loyalty nor teaching competence can well be legislated, such explicit requirements which are germane to teaching would scarcely seem to suppress free and forceful expression. A fourth restriction on speech and association appeared in Barenblatt v. United States,[20] where the Court held that legitimate legislative inquiry into

---

[18] Beilan v. Board of Public Education, 357 U. S. 399.

[19] Knight et al. v. Board of Regents, 390 U. S. 36.

[20] 360 U. S. 109.

Communist infiltration in education may include questioning a positively identified Communist Party member regarding his past and present membership and activities. Since the power of Congress to investigate and legislate Communist activity has never been questioned by the Court, and since such investigations did not attempt primarily to control academic endeavors, teachers could hardly feel restrained in their teaching activities by such a ruling.

Notwithstanding these four decisions against teachers' challenges, the doctrines stemming from the ten cases cited serve to dispel fear, uncertainty and suspicion in the pursuit of truth. They encourage teachers to inquire and to express the fruits of their intellectual endeavors, subject only to their consciences and professional ethics. They support the pursuit of knowledge and testing of beliefs in the quest to fulfill the ends of education. These constitutional doctrines and accompanying decisions offer teachers the assurance that they may confidently discharge the duties of their calling. We may confidently conclude that the decisions and attitude of the Supreme Court are relevant to educational ends: they indicate awareness and keen sensitivity of the importance of education to American society and its members, and recognize the necessity of these freedoms to the proper functioning of education.

Therefore, the decisions and attitude of the Supreme Court merit the endorsement of public education. May these critical freedoms of speech and association of teachers receive continued protection. May they be actively demonstrated by all teachers, and not be left to the courageous few who dare to challenge the status quo. In general, then, we view the decisions of the Supreme Court regarding the freedoms of speech and association for teachers as educationally sound.

Recommendations for Further Study

The limits imposed on this study, the methodology employed to weigh the deliberations of the Court in terms of education, and the legal protection of constitutional freedoms of teachers all suggest several exciting and profitable areas for study.

1. A definitive study of academic freedom is long overdue.
2. Other constitutionally protected freedoms vitally related to education, regarding equality and discrimination for example, might be examined to test whether they favorably or unfavorably affect teaching, learning, administration, and curriculum.
3. Having established the relevance of speech and association decisions in terms of education, the logical next step might be to

investigate the implementation of these decisions: whether teachers in their day to day activities are permitted the full extent of the protection that the Supreme Court has extended to the freedoms of speech and association.

4. Although the Supreme Court is the final arbiter of individual constitutional freedoms, many related cases are decided at the state level without appeal. Some knowledge of judicial decisions, statutory requirements, and administrative rules and regulations governing individual freedoms at the state level would be helpful to teachers. Ascertaining the laws governing individual liberties from state to state can be accomplished through the standard method of legal research.

One Final Proposal

Law is a codification of society's customs and conventions. Education thus may be expected to extend the rule of law by interpreting and implementing it. Beyond this traditional practice of education in relation to law, a more creative role is advocated. Since education is so important in a democratic social order and to individual growth, educators should actively influence the course of

law, forwarding propositions for legislative enactment, and serving as amicus curie in all major cases which affect educational practice. In short, education must actively influence legislation and judicial deliberations in supporting law as an instrument of social justice.

Consequently a need exists for educators with legal training or for lawyers who are schooled in education. Formal organizational ties should therefore be sought between schools of education and of law. Such an arrangement would serve two functions: first, to train educator-lawyers who could offer the necessary leadership to interpret, implement, and initiate laws which affect education; and second, to generate colloquies which can continually explore the legal needs of education and the educational needs of law.

Furthermore, offices staffed by educator-lawyers should be created in universities, in the United States Office of Education, and in state departments of education. Such offices would be charged primarily with initiating educationally sound laws. In the discharge of such a unique responsibility, these officers should seek to educate the public, legislators, and judges to the legal needs of education. Such educational officers could also encourage American youth to learn about the fundamental individual and social values which are

enshrined in the highest law of the land, the Constitution of the United States.

LIST OF CASES

LIST OF CASES

Supreme Court Cases

Abrams v. United States, 250 U. S. 616 (1919).

Adler v. Board of Education of New York City, 342 U. S. 485 (1952).

American Communication Association v. Douds, 339 U. S. 382 (1949).

Aptheker v. Secretary of State, 378 U. S. 500 (1964).

Baggett v. Bullitt, 377 U. S. 360 (1964).

Barenblatt v. United States, 360 U. S. 109 (1959).

Barron v. Mayor of Baltimore, 32 U. S. 243 (1833).

Bates v. Little Rock, 361 U. S. 516 (1960).

Beauharnais v. Illinois, 343 U. S. 250 (1951).

Beilan v. Board of Education, 357 U. S. 399 (1958).

Bread v. Alexandria, 341 U. S. 109 (1951).

Brown v. Board of Education of Topeka, 347 U. S. 483 (1954).

Chaplinsky v. New Hampshire, 315 U. S. 568 (1942).

Cole v. Arkansas, 338 U. S. 345 (1949).

Cox v. New Hampshire, 312 U. S. 569 (1941).

Cramp v. Board of Public Instruction, 368 U. S. 278 (1961).

Cumming v. Board of Education, 175 U. S. 528 (1899).

DeJonge v. Oregon, 299 U. S. 353 (1937).

Dennis v. United States, 341 U. S. 494 (1951).

Elfbrandt v. Russell, 384 U. S. 11 (1966).

Feiner v. New York, 340 U. S. 315 (1950).

Feldman v. United States, 322 U. S. 487 (1944).

Fiske v. Kansas, 274 U. S. 380 (1927).

Garrison v. Louisiana, 379 U. S. 64 (1964).

Gitlow v. New York, 268 U. S. 652 (1925).

Hague v. CIO, 307 U. S. 496 (1938).

Hughes v. Superior Court of California, 339 U. S. 460 (1950).

Keyishian v. The Board of Regents of the University of New York, 385 U. S. 589 (1967).

Knight et al. v. Board of Regents, 390 U. S. 36 (1968).

Kovacs v. Cooper, 336 U. S. 77 (1949).

Lanzetta v. New Jersey, 306 U. S. 451 (1939).

NAACP v. Alabama, 357 U. S. 449 (1958).

Near v. Minnesota, 283 U. S. 697 (1931).

New York Times v. Sullivan, 376 U. S. 254 (1964).

Noto v. United States, 367 U. S. 290 (1961).

Pickering v. Board of Education of Township High School District 205, 36 LW 4495 (1968).

Plessy v. Ferguson, 163 U. S. 537 (1896).

Prince v. Massachusetts, 321 U. S. 158 (1944).

Scales v. United States, 367 U. S. 203 (1961).

Schenck v. United States, 249 U. S. 47 (1919).

Schneider v. Irvington, 308 U. S. 149 (1939).

Shelton et al. v. Tucker et al., 364 U. S. 479 (1960).

Slochower v. Board of Education of the City of New York, 350 U. S. 551 (1956).

Speiser v. Randall, 357 U. S. 513 (1958).

Staub v. City of Baxley, 355 U. S. 321 (1958).

Stromberg v. California, 283 U. S. 354 (1931).

Sweezy v. State of New Hampshire, 354 U. S. 234 (1957).

Thomas v. Collins, 323 U. S. 516 (1945).

United Public Workers v. Mitchell, 330 U. S. 75 (1947).

United States v. Carolene Products, 304 U. S. 144 (1938).

United States v. Harriss, 347 U. S. 612 (1954).

Waugh v. Board of Trustees of the University of Mississippi, 237 U. S. 539 (1915).

West Virginia v. Barnette, 319 U. S. 624 (1943).

Whitehill v. Elkins, 389 U. S. 54 (1967).

Whitney v. California, 274 U. S. 357 (1927).

Wieman v. Updegraff, 344 U. S. 183 (1952).

Yates v. United States, 354 U. S. 298 (1957).

Federal and State Court Cases

Bradford v. Board of Education, 18 Cal. App. 19, 121 P. 929 (1912).

Dennis v. United States, 183 F.2d. 201 (1950).

Elfbrandt v. Russell, 92 Ariz. 147, 397 P.2d. 944 (1966).

Fogg v. Board of Education, 76 N. H. 296, 82 A. 173 (1912).

Leeper v. State, 103 Tenn. 500, 53 S. W. 962 (1899).

McAuliffe v. City of New Bedford, 155 Mass. 216, 29 N. E. 317 (1892).

Satan Fraternity v. Board of Public Instruction for Dade County, 156 Fla. 222, 22 So.2d. 892 (1945).

Scown v. Czarnecki, 264 Ill. 305, 106 N. E. 276 (1914).

State v. McKee, 17 Conn. 18 (1900).

Steele v. Sexton, 253 Mich. 32, 234 N. W. 436 (1931).

BIBLIOGRAPHY

BIBLIOGRAPHY

Books

Alexander, Carter and Burke, Arvid J. How to Locate Educational Information and Data. New York: Bureau of Publications, Teachers College, Columbia University, 1958.

American Association of School Administrators. Imperatives in Education. Washington, D. C.: ASSA, 1966.

American Historical Association, Commission on Social Studies. Conclusions and Recommendations. New York: Scribner, 1932.

Association for Supervision and Curriculum Development. Perceiving, Behaving, Becoming. Washington, D. C.: National Education Association, 1962.

Ballou, Richard. The Individual and the State; The Modern Challenge to Education. Boston: Beacon Press, 1953.

Benedict, Ruth. Patterns of Culture. Boston: Houghton Mifflin Co., 1934.

Black, Charles. The People and the Courts. New York: Macmillan Co., 1960.

Bloom, Benjamin S. (ed.) Taxonomy of Educational Objectives: Cognitive Domain. Vol. I. New York: Longmans, 1956.

Castberg, Frede. Freedom of Speech in the West. Part II. New York: Oceana Publications, Inc., 1960.

Chafee, Zechariah, Jr. Free Speech in the United States. Cambridge, Massachusetts: Harvard University Press, 1948.

Childs, John. Education and Morals. New York: Appleton-Century-Crofts Co., 1952.

Counts, George. Education and American Civilization. New York: Columbia University Press, 1952.

Cremin, Lawrence. The Transformation of the School. New York: Knopf, 1962.

Educational Policies Commission. Purposes of Education in American Democracy. Washington, D. C.: National Education Association, 1938.

Fellman, David. The Limits of Freedom. New Brunswick, N. J.: Rutgers University Press, 1959.

French, Will. Behavioral Goals of General Education in High School. New York: Russell Sage Foundation, 1959.

Fromm, Eric. The Sane Society. Greenwich, Connecticutt: Fawcett Publications, Inc., 1955.

Garber, Lee O. Education as a Function of the State. Minneapolis: Educational Test Bureau, Inc., 1934.

_____. Yearbook of School Law. Philadelphia: University of Pennsylvania, 1950-1966.

Garber, Lee O. and Reutter, Edmund, Jr. The Yearbook of School Law. Danville: The Interstate Publishers and Printers, Inc., 1967 to date.

Garforth, F. W. Education and Social Purpose. London: Oldbourne Book Co., 1962.

Goodlad, John. School, Curriculum and the Individual. Waltham, Massachusetts: Blaisdell Publishing Co., 1966.

Gottman, Jean. Megalopolis. New York: Twentieth Century Fund, 1961.

Haan, Aubrey. Education for the Open Society. Boston: Allyn and Bacon, Inc., 1962.

Haiman, Franklyn S. Freedom of Speech. New York: Random House, 1965.

Hamilton, Robert R. and Mort, Paul R. The Law and Public Education. Brooklyn: The Foundation Press, Inc., 1954.

Horney, Karen. The Neurotic Personality of Our Times. New York: Norton, 1937.

Hutchins, Robert M. The Conflict of Education. New York: Harper and Brothers, 1963.

Kearney, Nolan C. Elementary School Objectives. New York: Russell Sage Foundation, 1953.

Kelley, Earl. In Defense of Youth. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1962.

Krathwohl, David R., Bloom, Benjamin S., and Masia, Bertram B. Taxonomy of Educational Objectives: Affective Domain. Vol. II. New York: David McKay Co., Inc., 1966.

Levi, Edward H. An Introduction to Legal Reasoning. Chicago: The University of Chicago Press, 1948.

Levy, Leonard W. Freedom of Speech and Association in Early American History, Legacy of Suppression. New York: Harper and Row, 1963.

Lieberman, Myron. The Future of Public Education. Chicago: University of Chicago Press, 1960.

Lippman, Walter. The Public Philosophy. Boston: Little, Brown and Co., 1955. Ch. VII.

Maslow, Abraham H. Motivation and Personality. New York: Harper and Bros., 1954.

Meiklejohn, Alexander. Free Speech and Its Relation to Self-Government. New York: Harper and Bros., 1948.

Mill, John Stuart. On Liberty. London: John W. Parker and Son, 1859.

National Education Association. Education in a Changing Society. Washington, D. C.: National Education Association, 1963.

_____. Schools for the Sixties. New York: McGraw-Hill Book Co., 1963.

Power, Edward. Education for American Democracy. New York: McGraw-Hill Book Co., 1958.

Remmlein, Madeline K. School Law. New York: McGraw-Hill Book Co., 1950.

Rice, Charles E. Freedom of Association. New York: New York University, 1962.

Rogers, Carl. Client-Centered Therapy: Its Current Implications and Theory. Boston: Houghton Mifflin Co., 1951.

Russell, James E. Change and Challenge in American Education. Boston: Houghton Mifflin Co., 1965.

Shapiro, Martin. Freedom of Speech: The Supreme Court and Judicial Review. Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1966.

Shermis, S. Samuel. Philosophic Foundations of Education. New York: American Book Co., 1967.

Spicer, George S. The Supreme Court and Fundamental Freedoms. New York: Appleton-Century-Crofts, 1967.

Spurlock, Clark. Education and the Supreme Court. Urbana: University of Illinois Press, 1955.

Stanley, William O. et al. Social Foundations of Education. New York: The Dryden Press, 1957.

Sweet, Esther C. Civil Liberties in America. New York: D. van Nostrand Co., Inc., 1966.

Thayer, Vivian T. The Role of the School in American Society. New York: Dodd, Mead and Co., 1960.

Zelermyer, William. Legal Reasoning: The Evolutionary Process of Law. New Jersey: Prentice-Hall, Inc., 1960.

Legal Material

American Law Reports, Annotated. First Series, 175 v.; Second Series, 100 v.; ALR 2d Later Series 6v.; Third Series, 22 v. to date. Rochester, New York: Lawyers' Cooperative Publishing Co., 1918-1968.

American Digest System. Century Edition, Decennial Edition, Second Decennial Edition, Third Decennial Edition, Fourth Decennial Edition, Fifth Decennial Edition, Sixth Decennial Edition, West's General Digest--Third Series. St. Paul, Minnesota: West Publishing Co., 1658-1968.

Corpus Juris Secundum. New York: American Book Co., 1936 ff., 101 v.

National Reporter System. St. Paul, Minnesota: West Publishing Co., 1879-1968. (Includes the following Reporters: Atlantic, California, Federal, Federal Supplement, New York Supplement, Northeastern, Northwestern, Pacific, Southeastern, Southern, Southwestern, and Supreme Court.)

Restatement of the Law, Torts. 2d Series. St. Paul: American Law Institute Publishers, 1965.

Shepard's Citation to Cases. Colorado Springs, Colorado: Shepard's Citation, Inc., to 1968.

United States Reports. Washington, D. C.: Government Printing Office, to 1968.

Articles and Periodicals

Antieau, Chester J. "The Rule of Clear and Present Danger: Scope of its Applicability." Michigan Law Review, XLV (April, 1950), 811-840.

Ashford, Clinton R. "Constitutional Law--Freedom of Speech--Permissible Extent of Limitation." Michigan Law Review, XLVIII (January, 1950), 337-349.

Bagehot, Walter. "The Metaphysical Basis of Toleration." Primer of Intellectual Freedom. Edited by Howard Mumford Jones. Cambridge, Massachusetts: Harvard University Press, 1949, pp. 79-93.

Bestor, Arthur. "Education and the American Scene." Education in the Age of Science. Edited by Brand Blanshard. New York: Basic Books, Inc., 1959, pp. 57-75.

Bolmeier, E. C. "Legal Scope of Teachers' Freedoms." The Educational Forum, XXIV (January, 1960), 199-206.

Brameld, Theodore. "What is the Central Purpose of American Education." Phi Delta Kappan, XLII (October, 1961), 9-14.

Brennan, William J., Jr. "Law as an Instrument of Social Justice." Current Legal Concepts in Education. Edited by Lee O. Barber. Philadelphia: University of Pennsylvania Press, 1966, pp. 15-28.

_____. "The Supreme Court and the Meiklejohn Interpretation of the First Amendment." Harvard Law Review, LXXIX (November, 1965), 1-20.

Burgess, Ernest W. "Urban Areas." Chicago: An Experiment in Social Research. Edited by T. V. Smith and Leonard White. Chicago: University of Chicago Press, 1959, pp. 114-121.

Cahn, Edward. "Firstness of the First Amendment." Yale Law Journal, LXV (February, 1956), 464-481.

Counts, George. "Where Are We." The Educational Forum, XXX (October, 1966), 397-406.

Cushman, Robert E. "Civil Liberties." American Political Science Review, XLII (February, 1948), 42-48.

Douglas, Paul H. "The Central Problem of Economic Giantism." Problems of Economic Giantism, Vol. I. New York: Committee for Economic Development, 1954, pp. 95-105.

Emerson, Thomas. "Toward a General Theory of the First Amendment." The Yale Law Journal, LXXII (April, 1963), 877-956.

Fisher, John H. "Functions of Today's Schools." Nation's Schools, LXIII (January, 1959), 46-49.

Fisher, Roger. "The Constitutional Right of Freedom of Speech." Talks on American Law. Edited by Harold J. Berman. New York: Random House, 1961, pp. 85-91.

Hamilton, Alexander. "The Federalist, No. 84." The Federalist Papers. New York: Arlington House, pp. 510-520.

Hamilton, Robert. The Bi-Weekly School Law Letter, IV (December 23, 1954), 87.

Havighurst, Robert. "Social Class Influences on American Education." Social Forces Influencing American Education, Sixtieth Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press, 1961, pp. 120-143.

Hook, Sidney. "What is Education." Science Teacher, XXVI (November, 1959), 516-521.

Kasarjian, Levon, Jr. "Freedom of Association Extended to Area of Teachers' Qualification for Employment." Boston University Law Review, XLI (September, 1961), 269-272.

Keppel, Francis and Wilson, Sloan. "Goals for Our Schools." Saturday Review, XXXVIII (September 3, 1955), 17-18.

Lewin, Kurt. "Group Decision in Social Change." Readings in Social Psychology. Edited by Theodore M. Newcomb and Eugene Hartley. New York: Holt, 1947, pp. 330-344.

Meiklejohn, Alexander. "The First Amendment is an Absolute." The Supreme Court Review, 1961. Edited by Philip B. Kurland. Chicago: University of Chicago, 1961, pp. 245-266.

Melby, Ernest O. and Reeves, Floyd W. "Education and the Evolving Nature of Society." Personnel Services in Education, pt. II, Fifty-seventh Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press, 1958, pp. 15-40.

Meyer, Agnes E. "Education for a Democratic Culture." Educational Leadership, XV (October, 1957), 4-7.

Milton, John. "Aeropagiticas, 1644." Primer of Intellectual Freedom. Edited by Howard Mumford Jones. Cambridge, Massachusetts: Harvard University Press, 1949, pp. 147-171.

Nolte, M. Chester. "Teachers Image; Conduct Important." American School Board Journal, CLV (July, 1967), 27-29.

Peltason, Jack W. "Constitutional Liberty and the Communist Problem." Foundations of Freedom in the American Constitution. Edited by Alfred H. Kelley. New York: Harper and Brothers, 1958, pp. 88-139.

Shane, Harold G. "Objectives." National Federation Association Journal, LI (September, 1962), 42.

Strickland, Virgil. "Current Priorities in Education." School and Society, XCV (January, 1967), 51-52.

U Thant. "Education and International Misunderstanding." Teachers College Record, LXIII (October, 1961), 1-7.

Walker, Wanda. "The Changing Functions of American Schools." School and Community, XLIX (February, 1963), 12.

Other Sources

Constitution of Alabama, Amend. CXI, sec. 256.

Constitution of Arkansas, Art. XIV, sec. 1.

Constitution of Idaho, Art. IX, sec. 1.

Constitution of Indiana, Art. VIII, sec. 1.

Constitution of Michigan, Art. VIII, sec. 1.

Constitution of the United States, Arts. I, sec. 6 and VI; Amends. I and XIV, sec. 1.

"Genesis" 8:21, The Holy Bible. New York: McGraw-Hill, 1962.

General Education in a Free Society. A Report of the Harvard Committee. Cambridge: Harvard University Press, 1945.

Halpin, Andrew. "Change and Organizational Climate." Paper read before the Hawaii Governor's Conference on Education, Kaanapali, Hawaii, November, 1965.

"Hatch Act," 53 Stat. 1147. United States Statutes at Large.

Havighurst, Robert J. "The Urban Lower Class Schools." Paper read at the Human Development Symposium, University of Chicago, April 14, 1962.

Johnson, George M. Education Law. East Lansing: College of Education, Michigan State University, 1967.

McKay, Robert V. In the foreward to Charles E. Rice, Freedom of Association. New York: New York University Press, 1962.

National Education Association. The Scholars Look at the Schools. A Report of the Discipline Seminars. Washington, D. C.: National Education Association, 1961.

Opinion Research Corporation. A Survey for Motion Picture Corporation of America, Inc., Vol. 2. Princeton, New Jersey: The Corporation, 1957.

"Smith Act," 54 Stat. 670. United States Statutes at Large.

The Index to Legal Periodicals. New York: H. W. Wilson Co., 1950-1968.

The Records of the Federal Convention, 1787. 4 vols. Edited by Max Farrand. New Haven: Yale University Press, 1937.

U. S. Bureau of Education. Cardinal Principles of Secondary Education. Bulletin No. 35. Washington, D. C.: U. S. Government Printing Office, 1918.

U. S. Department of Commerce. Survey of Current Business. Vol. 48. February, 1968.

U. S. Department of Labor, Bureau of Labor Statistics. Employment and Earnings. Vol. XIV, No. 7. January, 1968.

U. S. House of Representatives. Hearings on ESEA Amendments of 1966. 89th Congress, 2d Session, April 15-16, 1966.

_____. Hearings on ESEA Amendments of 1967. 90th Congress, 1st Session, March 9-20, 1967.

U. S. Senate. Hearings on S. 1125 and S. 1126 of 1967. 90th Congress, 1st Session, May 25 and June 23, 1967.

West's Law Finder: A Research Manual for Lawyers. St. Paul, Minnesota: West Publishing Co., 1965.

White House Conference on Education, Nov. 28-Dec. 1, 1955. Washington, D. C.: U. S. Government Printing Office, 1955.

Wise, Arthur E. "The Constitution and Equality: Wealth, Geography and Educational Opportunity." Unpublished Ph.D. dissertation, University of Chicago, 1967.

APPENDICES

APPENDIX A

QUESTIONNAIRE

Directions for scoring the educational criteria:

The following list of educational purposes which also imply desirable conditions of learning and teaching were summarized from numerous texts, journal articles and treatises on education. They seemed to represent the most often mentioned purposes of education.

Which items in your considered judgment are most dependent for their realization on the teacher's free exercise of speech and association? Circle 5 for those that best answer this question and assign lesser scores to those that are not as dependent on the free exercise of speech and association.

Education should:

develop critical thinking in using evidence in problem-solving	5	4	3	2	1
develop effective communication and basic skills	5	4	3	2	1
develop creative skills of each student	5	4	3	2	1
maximize discovery and dissemination of knowledge of human experience	5	4	3	2	1
develop understanding and acceptance of self and others	5	4	3	2	1
develop commitment to ethical values and behavior consistent with those values	5	4	3	2	1
develop enthusiasm and skills to enjoy leisure	5	4	3	2	1
develop consumer and vocational competency	5	4	3	2	1

develop civic responsibility	5	4	3	2	1
promote physical health	5	4	3	2	1
develop enthusiasm and abilities for continued learning	5	4	3	2	1
develop willingness to confront cultural issues	5	4	3	2	1

APPENDIX B

EDUCATIONAL CRITERIA

Rank Order	Criteria	Score
1	Develop critical thinking in using evidence in problem-solving	4.9
2	Develop willingness to confront cultural issues	4.65
3	Maximize discovery and dissemination of the knowledge of human experience	4.6
4	Develop understanding and acceptance of self and others	4.6
5	Develop commitment to ethical values and behavior consistent with those values	4.6
6	Develop enthusiasm and abilities for continued learning	4.35
7	Develop civic responsibility	4.25
8	Develop creative skills of each student	3.7
9	Develop effective communication and basic skills	3.55