AN INQUIRY INTO RELIGION IN THE PUBLIC SCHOOL WITH GUIDELINES RELATING TO VOLUNTARY RELIGIOUS EXPRESSION AND TEACHING ABOUT RELIGION

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This is to certify that the

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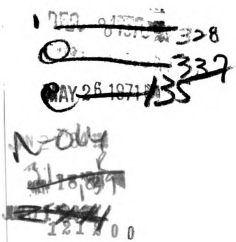

ABSTRACT

AN INQUIRY INTO RELIGION IN THE PUBLIC SCHOOL
WITH GUIDELINES RELATING TO VOLUNTARY
RELIGIOUS EXPRESSION AND TEACHING
ABOUT RELIGION

by Charles Jacob Mishler

The Problem

Conflict of opinion and confusion over prayer and Bible reading in the public schools have been the order of the day since the United States Supreme Court handed down the historical Schempp-Murray school prayer decision in 1963. The reaction by educators and laymen has varied from indifference to honest efforts to meet the rulings of the high court.

This study attempts to answer the question, "What is the place of religion in the public school?"

The Procedure

The procedure for this study involved an examination of the literature to gain a historical perspective of religion and the public school and the historical and current relationship between church and state. This was followed by a thorough examination of the Supreme Court cases that are relevant to the questions of the study to

determine the attitude of the Supreme Court toward religion and the public school.

Following the examination of the literature and the study of the court cases, guidelines were drawn together and documented. The development of the guidelines involved a careful analysis of the court decisions in the cases concerned with religion and the public schools. Dicta from the majority opinions were relied upon for the source of some of the guidelines and concurring opinions were used to substantiate these guidelines as well as to suggest and support additional criteria. The opinions of authorities in the fields of constitutional law and church-state relations, as recorded in the literature, were used to support some of the guidelines and to suggest other guidelines that are less explicitly outlined by the courts.

The Results of the Study

From the careful examination of the Supreme Court action, the writer's understanding of the history of church-state relationships, and the literature were formed guidelines that flow into a structure of understanding that will help to solve some of the confusion and uncertainty that prevails in the area of religion and the public school.

The guidelines, as listed in Chapter IV of this study, are divided into three categories. They are:

1. Guidelines supporting certain religious activity in the public schools.
2. Guidelines for aiding in the development of public education programs about religion.
3. Guidelines still unresolved.

Implications for Education

The use of the positive guidelines, emerging from this study, by educators, school boards, clergymen, and others concerned with education could lead to the following:

1. The development of public education programs that give proper recognition to "teaching about religion."
2. The improvement of existing public education programs.
3. Educational programs that more completely meet the needs of youth by providing a more well rounded education and leading to a more realistic attitude toward voluntary religious expression.
4. A better balance in the recognition of the Free Exercise and Establishment Clauses of the First Amendment.
5. An American population that is more knowledgeable and tolerant of the various religions and religious problems of the world.

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By

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CHAPTER I

CONFLICT AND CONFUSION IN THE PUBLIC SCHOOL

Following the United States Supreme Court decision in the Schempp-Murray[1] case on June 17, 1963, there has been a wave of reaction across our country tending either to remove any trace of religion from the public school or to passively ignore the law and maintain religious practices that are decidedly illegal.

A number of surveys indicate that state and school authorities have responded in conflicting ways:

- Some have ignored or tried to circumvent the rulings.
- Some are avoiding everything religious.
- Some are cautiously exploring the courts invitation to teach objectively about religion.[2]

The Arizona State Superintendent of Education has said, "Frankly, most teachers are scared to death to do anything with religion."[3]

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[1]See Appendix I, p. 67.

[2]George Williams, "Less Ritual, More Religion?" Christianity Today, Vol. IX, No. 11 (February 26, 1965), p. 42.

[3]Ibid.

William Petersen noted in an editorial of Eternity Magazine that the Schempp-Murray ruling may go down as one of the most criticized and least read decisions in history. He further pointed out that reaction in educational circles was varied. Some principals removed Bibles from the school libraries, just to play safe; one even placed a ban on children bringing their own Bibles into the school. One state superintendent frankly admitted that "we keep as far away as possible from religion."[4]

The immediate response to the Engel decision in 1962 which declared a short, seemingly inoffensive schoolroom prayer to be an unconstitutional establishment of religion in violation to the First Amendment, and the Schempp-Murray decision soon to follow, took the form of a vehement and emotional denunciation of the Court by some members of the public and the introduction of approximately 175 resolutions to amend the Constitution by members of Congress.

Congressman John Lindsay submitted a memorandum to the Committee on the Judiciary in presenting a legal case against the proposed school prayer amendments. The memorandum contains the following reference to the national reaction.

> The immediate reaction to Engel v. Vitale was intemperate and emotional. The Court was attacked by some who accused it of driving God from the schools

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[4]William J. Petersen, "The Next Move Is Yours," Eternity Magazine, (Philadelphia: The Evangelical Foundation, 1965) quoted in mimeographed sheet by Religious Instruction Association, Fort Wayne, Indiana.

and denounced the Justices as Communist atheists. Others, in a more thoughtful and reflective vein, criticized the Court's legal analysis and argued that it had failed to give due weight to the traditional concept of religion in American life. While not critical of the result reached, some questioned whether the implication of the decision forbade any consideration of religion in public schools or references to a Deity on official business.

The press was divided along predictable lines. Editorials defending the Court appeared in the New York Herald Tribune, New York Times, New York Post, Pittsburgh Post-Gazette, Hartford Courant, Chicago Sun-Times, Milwaukee Journal, St. Louis Post-Dispatch, Louisville Courier-Journal and Washington Post. Attacking the Court were the New York Journal (all Hearst papers), New York News, Baltimore Sun, Boston Globe, Chicago Tribune, Kansas City Star, Los Angeles Times, San Francisco News-Call Bulletin and Washington Star.

The clergy was also divided, in part along denominational lines. The Roman Catholic hierarchy almost unanimously opposed the decisions. Cardinal Spellman declared that: "I am shocked and frightened that the Supreme Court has declared unconstitutional a simple and voluntary declaration of belief in God by public school children. The decision strikes at the very heart of the Godly tradition in which America's children have for so long been raised."

The Vatican expressed "regret" at the "disconcorting" action of the Court. On the other hand, most of the Jewish clergy approved the decision. The Protestant ministry was more evenly divided. The Reverend Billy Graham thundered, "God pity our country when we can no longer appeal to God for help." And James A. Pike, Episcopal Bishop of San Francisco, declaring that "the Supreme Court has just deconsecrated the Nation," initiated a movement to amend the Constitution. Among those Protestants who defended the Court's decision was Harold E. Fey, Editor of the Christian Century, who, joined by a distinguished group of theologians, declared that "the Court's decision protects the integrity of the religious conscience and the proper function of religious and governmental institutions."

Many politicians, perhaps in response to an avalanche of mail critical of the decisions, spoke out against the Court. A rash of proposed constitutional amendments were introduced in the House and Senate to override the School Prayer case.

Former Presidents Hoover and Eisenhower both expressed shock at the Court's action. President

Kennedy, after noting a decision of the Supreme Court is the law of the land and must be obeyed, suggested that Americans might do well to pray more at home and in church.

"We have in this case a very easy remedy, and that is to pray ourselves. And I think that it would be a welcome reminder to every American family that we pray a good deal more at home, we can attend our churches with a good deal more fidelity, and we can make the true meaning of prayer much more important in the lives of all of our children."

Governor Rockefeller was alone among the Governors of the United States in opposing a resolution calling for a constitutional amendment to reverse the School Prayer decisions.

The Court obviously did not anticipate the public outburst which Engel engendered. It took great pains in Schempp to placate its most vociferous critics by engaging in a lengthy and exhaustive discussion of the proper and permissible relationship between religion and government. Justice Brennan's concurring opinion, in particular, demonstrates that the Supreme Court does indeed, in the words of Mr. Dooley, "follow the election returns."

So sensitive was the Court to the public reaction that Justice Clark, several weeks after the Engel decision, felt obliged to volunteer a rare extra-judicial comment:

"Here was a State-written prayer circulated to State-employed teachers with instructions to have their pupils recite it in unison at the beginning of each school day. The Constitution says that the government shall take no part in the establishment of religion. No means no. As soon as people learned that this is all the Court decided--not that there could be no official recognition of a Divine Being or recognition on silver or currency of 'In God We Trust,' or public acknowledgment that we are a religious Nation--they understood the basis on which the Court acted." Address before the Commonwealth Club of San Francisco.[5]

Interest in an amendment to the Constitution to provide for voluntary school prayer is still alive. Senate

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[5]United States Congress, Senate, Committee on the Judiciary, School Prayer, Hearings before Subcommittee 89th Congress, 2nd Session, on S. J. R. 148, August 1-8, 1966 (Washington: Government Printing Office, 1966), p. 229.

Joint Resolution 148, commonly referred to as the Dirksen Resolution, reads as follows:

> Nothing contained in this Constitution shall prohibit the authority administering any school, school system, educational institution or other public building supported in whole or in part through the expenditure of public funds from providing for or permitting the voluntary participation by students or others in prayer. Nothing contained in this article shall authorize any such authority to prescribe the form or content of any prayer.

However, as indicated in much of the testimony in the 1966 hearings before the Senate Subcommittee of the Committee on the Judiciary, the proposed amendment would not change the Constitution as it has already been interpreted by the Supreme Court.[6] It is apparent that there is still much confusion and disagreement about the position of the Supreme Court and the present status of school prayer and Bible reading.

Various attempts have been initiated by organizations in the country to clarify the court rulings and to place prayer and Bible reading in "proper" perspective in the public schools of the United States. Religious Instruction Association, Inc., Fort Wayne, Indiana is one such group. The declared purpose of the Religious Instruction Association is to promote significant, legal, and proper use of the Bible and religion in schools.[7]

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[6] Ibid., pp. 1-884.

[7] Mimeographed sheet, Religious Instruction Association, Inc., 4001 Fairfield Avenue, Fort Wayne, Indiana 46807.

Another organization, The Fourth R Foundation, Lincoln, Nebraska is dedicated to the purpose of assisting in the development of instruction about religion in the American public schools.[8]

Both organizations have been active in attempting to clarify what the courts have said concerning religion in the public schools. They have collected and made available to teachers information that is helpful in teaching about religion. They have appealed to school leaders through packets of materials, journal articles, public meetings, and correspondence to encourage the establishment of courses in biblical literature and history, and other legal treatment of the body of knowledge about religion. Although there is marked new interest in such courses and activity, school boards in general have not responded as quickly as they have moved to eliminate devotional exercises or to indifferently maintain the status quo.

The September 26, 1964 issue of the New York Times noted that most public schools were ignoring the Supreme Court invitation to teach objectively about the Bible and religion.

Douma[9] found that religious practices restricted from the public schools by the First Amendment to the Constitution

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[8]"Introducing Instruction About Religion in the Public Schools," The Fourth R Journal, Vol. 1, No. 1, March, 1966, p. 3.

[9]Rollin G. Douma, "Religious Practices in the Public Secondary Schools" (unpublished Master's dissertation, University of Michigan, 1966), p. 81.

of the United States do exist in the public secondary schools of Michigan.

A recent United Press survey of school systems from coast to coast showed that relatively few have done anything about the court's clear invitation to replace classroom devotions with objective study of religion.[10]

The inattention to the Supreme Court ruling is given a strong rebuttal in the Opinion of the Massachusetts Attorney General:

> We must remember that we are here dealing with the Constitution of the United States. This greatest instrument of social organization ever devised by the mind of man cannot lightly be disregarded. Involved in the question are implications which go far beyond the issue of mere disagreement with the decisions in Schempp and Murray. Involved are nothing less than acceptance of the basic structure of our government and of the principle that, without adherence to law, there is and can be no liberty.
>
> No official of government, of whatever situation, can in good conscience disobey the mandate of the Supreme Court. As a citizen, he is entitled to use such legal means as are available to effect a change in the law; but he cannot discharge his official functions otherwise than in a legal fashion.
>
> Massachusetts has a long and noble history of leadership in the struggle for liberty under law. To jettison this heritage at the first occasion of disagreement with the agency duly empowered to render a binding decision would be the ultimate act of hypocrisy.[11]

In the Schempp-Murray decision the Supreme Court seemed to go out of its way to emphasize the school's role

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[10]The State Journal [Lansing], October 20, 1966, p. B-3.

[11]Opinion of the Massachusetts Attorney General, dated August 20, 1963.

in religious instruction. The following statement by Justice Clark in the majority opinion is very significant.

> . . . It might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.[12]

As a result of the legal position, educators have been confronted with the responsibility to see that children are given the advantage of an educational program that includes objective instruction about religion and its significance in our history, culture, and thinking today.

So far, schools have largely neglected such serious study, and one result has been public confusion about the role of voluntary religion, compounded by ignorance and illiteracy in objective religious information.[13]

A more thorough understanding of the present confusion emerges as we look at the interwoven strands of American history, constitutional law, custom and the many diverse sectarian approaches in the church-state relationship.

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[12] Schempp-Murray, 374 U. S. 203 at 225 (1963).

[13] Franklin H. Littell, "From Persecution or Toleration to LIBERTY," Theory Into Practice, Our Religious Heritage and the Schools, Bureau of Educational Research and Service, Vol. IV, No. 1, (Columbus: The Ohio State University, 1965), p. 7.

The clarification of the law resulting from the United States Supreme Court decisions has been helpful in bringing the church-state relationship into focus. However, a proper understanding requires an awareness of two distinct problems faced by the court. The first was to properly interpret the relationship between the Establishment and Free Exercise Clauses of the First Amendment. The second was to distinguish between governmental action which is prohibited and governmental action which is permissable in the church-state relationship.

The purpose of this study is best expressed in three steps. The first two steps will provide the foundation on which step three can be built. The purpose of the study is:

1. To briefly examine the historical relationship between church and state.
2. To examine the expressions of the Supreme Court in the cases dealing with religion in the public school.
3. To develop criteria and guidelines for distinguishing between permissable governmental action and prohibited governmental action in the church-state relationship for the purpose of:
    a. Supporting certain religious activities.
    b. Aiding in the development of public education programs about religion.

CHAPTER II

THE STUDY--ITS PHILOSOPHY AND ORGANIZATION

A Positive Approach to the Problem

The literature gives considerable force to the notion that a positive reaction to the court decisions and opinions mentioned in this study is needed by the public schools of our country.

Kirk[1] points out that it needs to be more widely recognized that formal education is essentially a process of open-ended inquiry. The task of an educational system is to provide opportunities for students to examine, in an intellectual atmosphere and under the leadership of competent teachers, the whole range of forces which shape human society and culture.

Justice Jackson, in his opinion in the McCollum case, pointed out the fact that society and culture are the product of both religious and non-religious forces when he wrote that:

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[1]W. Astor Kirk, Symposium: Religion in the Public Schools XV, (New York: Religious Education Association, 1964), p. 471.

> Nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with the religious influences derived from paganism, Judaism, Christianity--both Catholic and Protestant--and other faiths accepted by a large part of the world's peoples.[2]

Kirk and others have observed that a public school system that does not reflect this historical fact in its curricula and instructional processes is simply not a good system of formal education. A curriculum that ignored religious forces entirely or provided only token opportunity for their consideration, would by implication give the impression that such forces have not been as real in men's lives as economics and politics. The prayer and Bible reading holding of the Supreme Court does not require public schools to deny that religious forces have been and are important in men's history.

Stearns has said,

> The Court seems not only to permit, but to require, that the schools use the Bible and the record of religious history in the secular presentation of literature and history.[3]

The review of the historical aspects of religion in the public schools, an awareness of the harmonious relationship between church and state in our country, and an examination of the court cases to come before the Supreme

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[2]McCollum v. Bd. of Educ., 333 U. S. 203 at 236 (1948).

[3]Harry L. Stearns, Symposium: Religion in the Public Schools V, (New City: Religious Education Association, 1964), p. 453.

Court in this area of concern leads one to the realization that a positive approach to the problem of religion in the public school can more nearly clarify the issues at stake than can the popular negative approach and dispair that is so prevalent in educational circles. The Supreme Court has suggested that an educational program that does not properly include religion is not complete. The history of our country, the wishes of our citizens, and the interpretations of our courts indicate that religion has a rightful and important spot in our schools as long as it does not violate the First Amendment.

It is the intent of this study to enhance the education of our youth by properly focusing the place of religion in our public schools through the development of criteria and suggested guidelines that will help schools and communities develop "complete" educational programs.

One could say that where educators and the public have interpreted court action to be prohibitive, it has in fact been intended to be regulatory.

Objectives of the Study

The objectives of this study are:

1. To view the influence of religious forces upon the historical development of public education in the United States.
2. To note the relationship between church and state in the United States.

3. To determine the attitude of the United States Supreme Court toward the relationship between religion and public education.
4. To establish the fact that a positive reaction to the decisions of the United States Supreme Court with regard to religion and the public school is possible and can lead to a stronger, better balanced educational program in the public school.
5. To assess the public reaction to the Supreme Court decisions having to do with religion and the public school and to note the results of the reaction.
6. To develop, from the opinions, reactions, and literature flowing out of the aftermath to the Supreme Court decisions, guidelines to help communities develop wholesome, meaningful public educational programs that give proper place to religion in the curriculum.

Definition of Terms

The following terms are defined to assist in clarification of this study.

1. Public school--K-12 schools, or any combination of those grades, which are functions of government as opposed to private or parochial schools.

2. Religion--general in nature and refers to any and all faiths, including "secularism" as spoken of by the Supreme Court of the United States.
3. Supreme Court--the United States Supreme Court.
4. First Amendment--the First Amendment to the Constitution of the United States.

Implications for Education

This study could help give religion its rightful place in the curricula of the public school by helping to point to "teaching about religion" in place of indoctrination in a particular faith.

If the objectives of the study are realized, educators and lay citizens will find helpful guidelines to assist in working out the problem areas of religion and the public school that presently exist.

If the guidelines are used, each child educated in American schools would then have the opportunity for a complete education, in so far as learning about religion is concerned, that is rightfully his.

Active use of the guidelines would point toward a better balance between the Free Exercise Clause and the Establishment Clause of the First Amendment.

In addition, it certainly is possible that a knowledgeable awareness of the religious pluralism, both in

America and in the world, will help to foster an attitude of respect and acceptance that will lead to deeper world understanding.

Procedure

The procedure for this study involves an examination of the literature to gain a historical perspective of religion and the public school and the historical and current relationship between church and state. This is to be followed by a thorough examination of the Supreme Court cases that are relevant to the questions of the study to determine the attitude of the Supreme Court toward religion and the public school.

After the findings are clearly in mind the writer will gather from the literature concerning religion and the public school, congressional hearings, and the writer's own thinking, criteria and guidelines that might be used by educators, school boards, and laymen to develop healthy, legal, and beneficial programs of teaching about religion in the public school. The guidelines should also lead to a better understanding of what is legal religious expression in the public school.

The development of the guidelines will involve a careful analysis of the court decisions in the cases concerned with religion and the public schools. Dicta from the majority opinions will be relied upon for the source of some of the guidelines and concurring opinions will be

used to substantiate those guidelines as well as to suggest and support additional criteria. The opinions of authorities in the fields of constitutional law and church-state relations, as recorded in the literature, will be used to support some of the guidelines and to suggest other guidelines that are less explicitly outlined by the courts.

Following the development of the guidelines, appropriate conclusions will be drawn and the study will be summarized.

CHAPTER III

HISTORY AND THE SUPREME COURT INFLUENCE EDUCATION

A brief review of the literature relating to two areas of concern is presented here. The two areas are: (a) the historical relationship of religion and the public school, and (b) the Supreme Court's contribution to our present understanding of what should be the role of religion in the public school.

The Historical Relationship of Church and State as it Applies to Public Education

The early educational movement in America was a direct result of religious influences. Boles[1] points to the militant Calvanism of the Puritans that was concomitant with a great interest in education. Because Puritans believed that each individual should read, evaluate and interpret the Bible, as well as Calvin's works, it was necessary for them to establish schools to meet this need.

Public schools were established, in other colonies as well as in the Puritan colonies, to enable all families

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[1]Donald E. Boles, The Bible, Religion and the Public Schools (Ames: Iowa State University Press, 1961), p. 2.

of the various congregations to send their children to school. The local school systems developed with ministers usually supervising the town schools.

Pfeffer[2] states that the origin of public education in the United States not only antedates separation of church and state, to a very real extent, it owes its very existence to the fact that it antedated separation.

A look at various statutes and state constitutions bears out the fact that the motivating force behind public education in the American colonies was to enable the students to read the Bible and to become better versed in Protestant religious dogma.[3]

E. P. Cubberly, when discussing colonial education, has explained,

> The most prominent characteristic of all early Colonial schooling was the predominance of the religious purpose in instruction. One learned chiefly to be able to read the catechism and the Bible. . . . There was scarcely any other purpose in the maintenance of elementary education.[4]

During the last years of the colonial period and during the early period of independence, a concern for church-state separation advanced steadily. Oddly enough, the religious freedom many had sought when coming to

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[2]Leo Pfeffer, Religion, Education and the Constitution, 8 Lawyers Guild Review 387 (1948), p. 391.

[3]Boles, op. cit., p. 6.

[4]E. P. Cubberly, Public Education in the United States (New York: Houghton Mifflin Co., 1934), p. 41.

America was being threatened by the sectarian nature of the early schools.

Butts, Konvitz, Justice Rutledge and others have maintained that James Madison and others responsible for the wording of the First Amendment to the United States Constitution desired to erect an insurmountable "wall of separation" between church and state.[5] This would prevent any form of single or multiple establishment as well as prohibit all forms of government cooperation and indirect aids to religious groups.

Corwin, O'Neill, Pfeffer and others have firmly maintained that this is not the case.[6] They believe that the men responsible for the First Amendment did not expect the Federal government to be wholly neutral in matters of religion. Rather, the First Amendment was limited to Federal action and was for preventing the establishment of a single state church, and carried no injunction against incidental or indirect aid to all religions.

The provision of the First Amendment was made applicable to the individual states by the "incorporation doctrine" of the Fourteenth Amendment, which was applied to the Establishment of Religion Clause of the First Amendment in the McCollum case in 1948. The "incorporation doctrine," as projected by the Supreme Court, provides that those rights of the Bill of Rights necessary

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[5]Boles, op. cit., p. 14. [6]Ibid.

for an ordered freedom are incorporated into the clause of the Fourteenth Amendment which stipulates that no state shall "deprive any person of life, liberty or property without due process of law." Consequently the provision of the First Amendment applies to both state and national government.[7]

Horace Mann, generally regarded as the "father" of the public school in America, in his final annual report as secretary of the Massachusetts Board of Education stated in 1848 that "the Bible is the acknowledged expositor of Christianity. . . . This Bible is in our Common Schools by common consent."[8]

Blair[9] expressed Mann's position regarding religion and government as follows:

> Horace Mann could not but reject the view that government should concern itself with the fixing of religious truth. On the other hand he could not accept the view that adjured all religion and was a reaction to it. He accepted the view that "Government should do all that it can to facilitate the acquisition of religious truth, but shall leave the decision of the question what religious truth is, to the abritrament, without human appeal, of each man's reason and conscience."

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[7] Ibid., p. 187.

[8] Sam Duker, The Public Schools and Religion, The Legal Context (New York: Harper and Row, 1966), p. 16.

[9] J. L. Blair (ed.), Cornerstones of Religious Freedom (Boston: The Beacon Press, 1949), p. 160.

Culver[10] points to a statement written in 1844 by Mann that further clarifies his position on the place of the Bible in the public school.

> I believe it is their wish, as it is mine, that the Bible should continue to be used in our schools; but still, that it should be left with local authorities, where the law now leave it, to say, in what manner, in what classes, etc., it shall be used. I suppose it to be their belief, as it is mine, that the Bible makes known to us the rule of life and the means of salvation; and that, in the language of the apostle, it is a faithful saying and worthy of all acceptance, that Christ Jesus came into the world to save sinners; but still, that it would be a flagrant transgression of our duty to select anyone of those innumerable guide boards--whether pointing forward, right, left, or backward--which fallible men have set up along the way, and to proclaim that the kingdom of heaven is only to be sought for in that particular direction.

Following the Civil War there was a growing concern to keep church and state separate by not approving sectarian schools. It is clear that a significant number of people in the United States were opposed to sectarian instruction in the public schools. The big question--"Did they regard Bible reading as an example of sectarian instruction?" It would appear that many Protestants did not see the Bible as a sectarian book. As late as 1964, in the Chamberlin v. Dade County Board of Public Instruction case, the Bible is referred to as a tool for teaching morality when used objectively.[11] However, from the 1870's through

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[10]R. B. Culver, Horace Mann and Religion in the Massachusetts Public Schools (New Haven: Yale University Press, 1929), p. 193.

[11]Chamberlin v. Dade County Board of Public Instruction 374 U. S. 487 (1963). See Appendix VII, p. 74.

the turn of the century, Roman Catholics and Jews in their sincere opposition to the use of the King James Bible in the public schools were gaining adherents from a variety of other groups.[12]

By 1900 the principle of separation of church and state had gained nearly complete acceptance among the states. Whether through constitutional provision, state statute, attorney general's ruling, or court decision, prohibitions on the use of public funds for sectarian purposes and guarantees of freedom of religion were almost universal.

The "modern" period saw the released time concept receiving impetus from Protestant groups which felt that the Sunday Schools had failed to supply enough religious education for the children under their care. The first such program appeared in Gary, Indiana in 1913.

At the close of World War I the interest in religion in America was renewed and especially in the place of religion in public education.

The increasing diversity of religious views in the United States led to the establishment of many parochial schools. These schools, of course, were intended to keep the religious influence in the lives of young people.

Dierenfield[13] conducted a study prior to the Engel case to reflect the geographic distribution of various

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[12]Boles, op. cit., p. 32.

[13]R. H. Dierenfield, Religion in American Public Schools (Washington, D. C.: Public Affairs Press, 1962), p. 101.

practices involving religion in public schools. The summary reflects that religion still has, in the opinion of school superintendents, an important place in the schools of America. It reads:

> In summary, school superintendents look with reservation on released time programs, the majority feeling they have some value but twice as many being opposed as in favor of them. They view the celebration of religious holidays by school activities with caution, a majority believing it can be done if care is exercised not to offend the religious convictions of those of different persuasions. The superintendents are rather divided on the distribution of Gideon Bibles in the public schools although a small majority advocate the practice.
>
> They favor the Baccalaureate service as a part of high school graduation, and oppose the use of public tax funds for "fringe benefits" for parochial school students.
>
> On the whole they are satisfied that their school systems are handling religion in an adequate way.

Drinan[14] has concluded:

> Even the most summary review of church-state relations in America will reveal overwhelming evidence that there are vast, non-controversial areas where an almost universally accepted understanding on church-state matters exists in the American mind. The remarkable consensus on moral and religious ideas which underlies this understanding on many church-state issues has, until recently, been almost unchallenged and in fact unexplored.

Lest the reader be misled at this point, reference must be made to the conflict that has also existed in the church-state relationship. Duker says,

> Generally speaking, immigrants to the American colonies as well as to the United States have come from areas where there was little diversity in

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[14]Robert F. Drinan, Religion, The Courts, and Public Policy (New York: McGraw-Hill Co., 1963), p. 218.

> religious attitudes and beliefs. This was true even when groups came to America to escape religious persecution. The group coming to America in such cases was usually quite homogeneous in this respect. It came from a society in which there was a commonly accepted, if not always an officially established religion. For example, when Jews migrated to the United States, more often than not they came from countries where there was one generally accepted Christian denomination. Usually the Jewish group was also one that was not heterodox in its religious outlook.
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> To live in a society marked by extreme diversity in religious beliefs was consequently a new experience for practically all immigrants to America, from the earliest colonists to the most recent arrivals. It is, of course, true that some of the early colonies were just as homogeneous in a religious sense as were the European centers from which the colonists came. Gradually, however, these colonies tended to become more diverse in this respect. That the process of adjustment has been a difficult one, fraught with controversy, compromise, antagonism, reconciliation, emotion, and reason, is not surprising.[15]

It is especially noteworthy to mention the Protestant antagonism toward the Catholic and Jewish groups as well as the antagonism in the reverse direction. Some authorities have suggested that, but for the developing sectional strife ending in the Civil War, America might have suffered a period of religious wars. Parochial schools resulted from this lack of adjustment and political action of adherents to the non-Protestant faiths was curtailed until the historic presidential election of 1960.[16]

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[15]Duker, op. cit., p. 14.

[16]Franklin H. Littel, "From Persecution or Toleration to Liberty," Theory Into Practice, Our Religious Heritage and the Schools, Vol. IV., No. 1 (Columbus, Ohio: The Ohio State University, 1965), p. 3.

Even with the historical diversity that actually brought about the elimination of sectarianism from the public schools we find a warm and cordial relationship existing between government and religion in the United States today. This relationship is unobserved by many and further complicated by the difficulty of communication among religious groups and government.

Professor Franklin H. Littell, Chicago Theological Seminary, depreciates the church-state terminology customarily employed. In his study of religion in America he states:

> Many contemporary writers attempt to read back into the past "a wall of separation" between church and state which in fact never has existed in the United States. Indeed the form of words, the shibboleth, is a major impediment in the way of honest discussion.[17]

It is an important fact that the United States Supreme Court did not rule in any substantial way on the meaning of the "establishment" clause of the First Amendment until the year 1947. The Everson[18] decision of 1947, which sustained the constitutionality of state subsidized bus rides for parochial school children in New Jersey, was followed by five important decisions in the period between 1947 and

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[17]Franklin H. Littell, From State Church to Pluralism: A Protestant Interpretation of Religion in American History (New York: Doubleday & Co., 1962), p. 99.

[18]See Appendix III, p. 69.

1962. The McCollum decision in 1948 and the Zorach[19] ruling in 1952 centered on released-time religious education. The Torcaso ruling in 1961, declared unconstitutional a Maryland law requiring an oath of belief in God as a prerequisite for public office holders in the state. A fourth opinion, handed down in May, 1961, upheld the constitutionality of Sunday closing laws while a fifth ruling, issued in June, 1962, banned a nondenominational prayer from the public schools in the state of New York.[20]

On June 17, 1963, the Supreme Court of the United States ruled on the Schempp and Murray cases in a single set of opinions. These cases involved the reading of verses from the Holy Bible without comment and opening exercises that included Bible reading and recitation of the Lord's Prayer. Both were ruled unconstitutional.[21]

In the same historic term, the Chamberlin v. Dade County case reached the United States Supreme Court. This case, which arose in Flordia, involved the constitutionality of a number of religious practices. Some of the practices complained of were ruled unconstitutional by the Florida trial court. An appeal to the Florida Supreme Court upheld the constitutionality of the practices. In June, 1964, the

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[19]See Appendix IV, p. 70.

[20]Drinan, op. cit., p. 3.

[21]Duker, op. cit., p. 180.

United States Supreme Court reversed the ruling in so far as prayer and Bible reading were concerned but did not pass on the other issues raised.[22]

In the Horace Mann case[23] the Maryland Court of Appeals held that one church-related college which did not have any sectarian requirements for members of faculty or students was not precluded by the establishment of religion position of the First Amendment from receiving a government grant. In granting the motion to dismiss, the Supreme Court was content to let the decision of the state court stand.

The Supreme Court, however, refused to pass judgment on the other ruling in the same case. By denying certiorari in Board of Public Works v. Horace Mann League, the Court refused to consider, let alone pass upon, the Maryland court decision that aid to sectarian schools even for non-sectarian purposes, such as construction of dormitories, was unconstitutional.[24]

While all these rulings are of great importance, the fact is that for a century and a half the nation existed without a ruling from the Supreme Court of the United States on the constitutional prohibition of an "establishment" of religion.

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[22] Ibid., p. 212

[23] Horace Mann League v. Board of Public Works, 242 Md 645.

[24] Commerce Clearing House Reports Summary, Number 74, November 21, 1966.

Drinan observes that a very widespread revolution of ideas would be required to erode in any substantial way the remarkable relationship between religion and government that exists in the United States. He describes this relationship as "symbiosis." This term, a biological concept meaning the living together of two dissimilar organisms, seems to convey more than any other single word both the profound interdependence and the complete independence of the secular and the sacred in American life.[25]

Four major alliances are listed by Drinan as existing between the American state and religious groups. He states that these alliances cannot be considered other than as intended to benefit and promote religion. Tax exemption for churches and similar institutions, draft immunity for divinity students and clergymen, government salaries for chaplains and tax support for church-related social welfare agencies have their roots to a large extent in the truly extraordinary respect and esteem accorded by American institutions to the person of the minister of religion.[26]

As Justice Douglas noted in his concurring opinion in the New York public school prayer case decided on June 25, 1962, the whole structure of our government is "honey combed" with expenditures of state funds for purposes in which religion is intermingled.[27]

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[25]Drinan, op. cit., p. 5. [26]Ibid.

[27]Engel v. Vitale, 370 U. S. 421 at 437 (1962). See Appendix II, p. 68.

The four areas of church-state cooperation mentioned by Drinan may be major islands of church-state peace in America but there are countless other instances, almost down to the interstices of American life, where religion and government collaborate in a mutually harmonious and beneficial way. It is noteworthy to mention the federal assistance to programs to combat juvenile delinquency in which there is no ban on sectarian agencies receiving funds, President Kennedy's request in 1962 for each locality to set aside a time to pray for success in our search for a just and lasting peace, the Bible is used for the administration of oaths, NYA and WPA funds were available to both public and parochial schools during the depression period, religious organizations are given special postal privileges, it is common practice for tax-financed public libraries to purchase and display sectarian books and periodicals, and, in 1946, federal law provided for the expenditure of funds to equip or build hospitals within designated areas of need. Private, "non-profit" groups were declared eligible to receive Federal funds if their state's department of health approved the medical standards of the particular group.

Looking at these "aids" to religion leads one to conclude that in these and other spheres of life, an obvious harmonization of the purposes of church and state has been attained. No one has seriously contended that the autonomy of religion has thereby been subverted or weakened, nor

that the state has failed to perform all its duties to its citizens. A partnership between the moral powers of the state and the spiritual powers of the church for a common purpose should not be condemned unless it clearly subverts or weakens the mission of one of the participating parties.[28]

Early in the history of our country we find legislation that acknowledges a place for religion in the public school. The Northwest Ordinance, which antedated the First Amendment, provided in Article 3 that "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

In the Elementary and Secondary Education Act of 1965 we again find a warm, cooperative attitude toward religion. The act anticipates broadened instructional offerings under publicly sponsored auspices which will be available to elementary and secondary school students regardless of where they attend school. Although this legislation is not directed entirely toward religious schools, it warmly accepts the children from these schools as having standing to receive aid in education.

Congress has said that dual enrollment is acceptable and that the criteria for aid is need of the child rather than the type of school attended. This represents a

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[28]Drinan, op. cit., p. 34.

considered judgment on the part of one of the three major branches of our government. In addition we find that the Supreme Court has assumed that the Congress wants to do what is consistent with the constitution, and consequently makes every effort to so act.

The concept of dual enrollment has been approved by the Appellate Court of Illinois in a suit brought for an injunction to restrain the Chicago School Board from maintaining an experimental dual enrollment program.

Students enrolled in the program took all courses at the public high school except English, social studies, music, and art, which they studied at a nearby parochial school. The students received credit toward a Chicago Public School diploma for the courses taken at the private high school.[29]

Justice Douglas uses the words and action of Congress to support his concurring opinion in Engel v. Vitale. He says:

> The Pledge of Allegiance, like the prayer, recognizes the existence of a Supreme Being. Since 1954 it has contained the words "one nation under God, indivisible, with liberty and justice for all." . . . The House Report, recommending the addition of the words "under God" stated that those words in no way run contrary to the First Amendment but recognize "only the guidance of God in our national affairs." . . . Senator Ferguson, who sponsored the measure in the Senate, pointed out that the words "In God We Trust" are over the entrance to the Senate Chamber. He added: "I have felt that the Pledge of Allegiance to the

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[29]Morton v. Board of Education of City of Chicago, 216 N. E. 2d 305 (1966).

> Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.
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> "It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion; it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God's province over the lives of our people and over this great Nation."[30]

Rice has suggested that there is historical evidence of an impressive magnitude and variety that compels the conclusion that the American colonies, the independent American states, and finally the United States of America, were all premised, in their juridicial and social structure, upon the facts that there is a providential Creator and that man, society and the state ought in some way to acknowledge Him and His law.[31]

Some authorities have concluded that the relationship is not that strong; however, we cannot help but note that the currents of church-state relationship are prominent and important enough to be emphasized.

The Supreme Court Contributes to Our Understanding

It is very significant to note the attitude of the Supreme Court as they have attempted to clarify the law

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[30] Engel, op. cit., p. 440.

[31] Charles E. Rice, The Supreme Court and Public Prayer (New York: Fordham University Press, 1964), p. 27.

in the several cases involving religion and the public school with which they have been concerned. The opinions of the Justices remove the notion that the inclusion of religion in the curriculum is forbidden. Instead they encourage the responsible interpretation of religion in the public school curriculum.

Establishment v. Free Exercise

In Cantwell v. Connecticut the court expresses concern for the Establishment Clause and the Free Exercise Clause as follows:

> On the one hand, it (the First Amendment) forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and the freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts,--freedom to believe and freedom to act.[32]

The Supreme Court recognized the "free exercise" clause in Sherbert v. Verner where they ruled that a Seventh Day Adventist was eligible for unemployment compensation even though she had refused to accept work that required her services on Saturday, contrary to her religious beliefs. The court held that to rule otherwise would impose an unconstitutional burden on the free exercise of her religion. Here the court expressed concern that they not run afoul of the Free Exercise Clause of the First Amendment.[33]

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[32]Cantwell v. Connecticut, 310 U. S. 296 at 303 (1940).

[33]Sherbert v. Verner, 374 U. S. 398 at 411 (1963).

Justice Brennan adds further clarification to the impact of the two clauses in his concurring opinion in the Schempp-Murray case as follows:

> These considerations bring me to a final contention of the school officials in these cases: that the invalidation of the exercises at bar permits this Court no alternative but to declare unconstitutional every vestige, however slight, of cooperation or accommodation between religion and government. I cannot accept this contention. . . . For not every involvement of religion in public life violates the Establishment Clause. . . . I believe that the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.

He further states:

> There are certain practices, conceivably violative of the Establishment Clause, the striking down of which might seriously interfere with certain religious liberties also protected by the First Amendment. Provisions for churches and chaplains at military establishments for those in the armed services may afford one such example. The like provision by state and federal governments for chaplains in penal institutions may afford another example. It is argued that such provisions may be assumed to contravene the Establishment Clause, yet be sustained on constitutional grounds as necessary to secure to the members of the Armed Forces and prisoners those rights of worship guaranteed under the Free Exercise Clause.

Justice Brennan also lists in a footnote this statement by the Armed Forces Chaplains Board concerning the chaplain's obligation:

> To us has been entrusted the spiritual and moral guidance of the young men and women in the Armed Services of this Country. A chaplain has many duties--yet, first and foremost is that of presenting God to men and women wearing the military uniform. What happens to them while they are in military service has a profound effect on what happens in the community as they resume civilian life. We, as chaplains, must take full cognizance

of that fact, and dedicate our work to making them finer, spiritually strengthened citizens.[34]

The Court Recognizes the Importance of Religion

In the McCollum case, the concurring opinion of Justice Jackson points to the importance of religious influence in the school. He says,

> While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps such subjects as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be excentric and incomplete, even from a secular point of view. . . . The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity--both Catholic and Protestant--and other faiths accepted by a large part of the world's peoples. One can hardly respect the system of education that would leave the student wholly ignorant of the currents of religious thought that move world society for a part in which he is being prepared.[35]

In the Zorach case, Justice Douglas delivered the majority opinion in which he said,

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[34] Schempp-Murray, 374 U. S. 203 at 297 (1963).

[35] McCollum v. Board of Education, 333 U. S. 203 at 235 (1948).

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. We are a religious people whose institutions presuppose a Supreme Being. . . . But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.[36]

The Child Benefit Theory

The Supreme Court has given additional light to our understanding through action that has led to an idea termed the "child benefit theory." The child benefit theory is the name given to the concept that the state may extend certain kinds of welfare aid to students attending church-related schools in situations where general aid to the parochial schools themselves would be unconstitutional.[37]

The Everson case, decided in 1947 by the United States Supreme Court, serves as the origin of the child benefit theory. The state of New Jersey passed legislation in 1941 which authorized local school boards to make rules and contracts for the transportation of school children, including those attending non-profit private and parochial schools. A township board of education, under this law, was authorized to reimburse parents for money spent for transportation to parochial schools as well as public schools.

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[36] Zorach v. Clauson, 343 U. S. 306 at 313 (1952).

[37] George R. La Noue, "The Child Benefit Theory," Theory in Practice, Our Religious Heritage and the Schools, Vol. IV, No. 1 (Columbus, Ohio: The Ohio State University, 1965), p. 18.

In Everson v. Board of Education,[38] the United States Supreme Court in a 5-4 decision, affirmed a holding of the New Jersey Court of Appeals upholding the validity of the statute on the ground that no aid was being given by this law to any religious institution but only to school children and their parents.

Two additional cases add strength to the child benefit theory. In the first, Cochran v. Board of Education,[39] a Louisiana statute providing for the supplying of secular textbooks to the school children of the State was under attack. The statute was attached as taking public property for private use as prohibited by the Fourteenth Amendment.

The Court ruled in this case that there was no constitutional objection to a state providing secular textbooks to non-public school pupils. It was held that this act was for the children's benefit and not a form of state aid to non-public schools.

In an additional case decided in 1908, the Court upheld, in Quick Bear v. Leupp,[40] the payment of monies to the Bureau of Catholic Indian Missions of Washington, D. C., a sectarian organization, for the care, education, and maintenance of a number of Indian pupils of the Sioux tribe,

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

[39] Cochran v. Board of Education, 281 U. S. 370 (1930).

[40] Quick Bear v. Leupp, 210 U. S. 50 (1908).

at a sectarian school on the Rosebud reservation, known as the St. Francis Mission Boarding School.

The significance of the Quick Bear case is the fact that the government was legally involved in the expenditure of funds to a sectarian school. Although direct tax funds were not involved since at the time of action the money belonged to the Sioux Nation, the government was instrumental in the transaction that gave funds to the St. Francis Mission Boarding School.

All three cases are recognizing aid to the child as distinguished from aid to the school. In Everson, Justice Black tried to make clear the narrow line between using public funds for parochial schools and permitting some general welfare benefits to go to all school children. He expressed his concern as follows:

> New Jersey cannot consistently with the "establishment of religion" clause of the First Amendment contribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general State law benefits to all its citizens without regard to their religious belief.[41]

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[41] Everson, op. cit., p. 16.

Within the dicta of Everson and Cochran it is possible to deduce some principles that can serve as guiding limitations when distinguishing between aid to the child and aid to the school. The line of constitutionally permissible aid did not extend beyond these limits:

1. No religious institution acquired new property or personnel through state action.
2. The state kept complete control of the administration and spending of all public funds.
3. No religious use was made of what the state provided.[42]

If these three limitations are accepted as legal principles, then the child benefit theory can be used to permit the state to include children attending parochial schools in its general concern for citizen health and safety through extension of medical and dental care and other auxillary services within a general constitutional framework of separation of church and state.

In state court opinions since Cochran and Everson, the child benefit theory has rarely been used to justify any state welfare measures. If we must err, the state courts seem to argue, let it be on the side of separation of church and state.[43]

In spite of the dominant state court reaction we note that the Everson case did not decide that the state may not

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[42]La Noue, op. cit., p. 20.

[43]Ibid.

aid religion. Aid to religion may be unobjectionable provided it is incidental to the accomplishment of a dominant secular purpose.[44]

Evolution of the Neutrality Concept

The lack of hostility of the Supreme Court toward religion is further born out by Justice Black in the opinion delivered in the Engel case. He said,

> The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that "more things are wrought by prayer than this world dreams of."

He further adds in a footnote,

> There is of course nothing in the decision here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing, officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercises that the State of New York has sponsored in this instance.[45]

Justice Douglas further adds to our understanding through his concurring opinion in the Engel case. He said, "The First Amendment leaves the Government in a position not of hostility to religion but of neutrality."[46]

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[44]Paul W. Bruton, Professor of Law, Address delivered at the Pennsylvania Conference on Church and State, October 13, 1965.

[45]Engel, op. cit., p. 435. [46]Ibid., p. 313.

The concept of neutrality is further emphasized and clarified in the Schempp-Murray case. Justice Clark, after reviewing related previous cases decided by the Supreme Court, states:

> The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal government would be placed behind tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course thereto, free of any compulsion from the state. . . .[47]

Evolution of the wholesome neutrality concept can be traced from the Everson case where the opinion expresses quite a different interpretation of the "establishment of religion" clause of the First Amendment. The Court said, "In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"

The opinion further states, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable."[48]

The view that emphasized a wall of separation between church and state prevailed for a time and is still

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[47] Schempp-Murray, op. cit., p. 222.

[48] Everson, op. cit., p. 18.

held to be important by many, as reflected in the testimony before the congressional committee dealing with proposed amendments to the constitution.[49]

The same interpretation seems to hold in the McCollum case but in the Zorach case we find Justice Douglas stating in the majority opinion,

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. We are a religious people whose institutions presuppose a Supreme Being . . . But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.[50]

The apparent attitude of "no preference" then evolves into an expression of neutrality that Justice Clark refers to as a "wholesome neutrality" in the Schempp-Murray case.[51]

Although many authors still write of the intention of the First Amendment to create a wall of separation between church and state it is apparent that the Supreme Court, through its several cases, has come to the point of a concept of "wholesome neutrality" in place of the previous concept of "wall of separation."

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[49]United States Congress, Senate, Committee on the Judiciary, School Prayer, Hearings before Subcommittee, 89th Congress, 2nd Session, on S. J. R. 148, August 1-8, 1966 (Washington, D. C.: Government Printing Office, 1966).

[50]Zorach, op. cit., p. 312.

[51]Schempp-Murray, op. cit., p. 222.

The Overall Impression Given by the Schempp-Murray Decision

Perhaps the greatest contribution to an understanding of the Supreme Court's position on religion and the public school comes from the June 17, 1963 decision on the Schempp-Murray case. Writing for the majority, Justice Clark declared that "government authorities may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion."

On behalf of the court, Justice Clark denied that the Supreme Court's decisions in these particular cases in any sense has that effect.

Immediately following his denial of judicial establishment of secularism, Justice Clark wrote this significant statement:

> . . . it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.[52]

Justice Brennan made a similarly significant statement. He declared that the holding of the Supreme Court:

> . . . plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it

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[52] Ibid., p. 225.

would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. To what extent, and to what points in the curriculum religious materials should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools.[53]

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[53] Ibid., p. 300.

CHAPTER IV

GUIDELINES FOR ACTION

The Schempp-Murray decision represents the latest action of the United States Supreme Court that gives clarification to what is permissible government activity and what is prohibited government activity in the church-state relationship in public education. The decision in this case contains the concurring opinion of several of the Justices who supported the finding of the Court.

Justice Clark, who wrote the majority opinion, lays down a broad guideline emphasizing complete education. He says,

> . . . it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.[1]

Having made the distinction between teaching religion and teaching about religion, Justice Clark speaks of the "wholesome neutrality" emerging in the Supreme Court cases

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[1] Schempp-Murray, 374 U. S. 203 at 225 (1963).

and advances a test that might guide decisions that need to be made where the Establishment and Free Exercise Clauses of the First Amendment overlap.

> The test may be stated as follows: what are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.[2]

The concept of neutrality is a dominant theme in the Schempp-Murray decision. Justice Brennan says, " . . . the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion."[3]

In his concurring opinion to the Schempp-Murray decision, Justice Brennan states that he cannot accept the contention that the invalidation of the exercises questioned in these cases permits the Court no alternative but to declare unconstitutional every vistage, however slight, of cooperation or accommodation between religion and government. He further says that not every involvement of religion in public life violates the Establishment Clause.

The Justice believes that the line that must be drawn between the permissible and the impermissible is one which

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[2] Ibid., p. 222.

[3] Ibid., p. 295.

accords with history and faithfully reflects the understanding of our founding fathers.

The opinion of Justice Brennan includes guidelines intended to clarify action of the Court under the Establishment Clause. He says,

> What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religion with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice.[4]

Justice Goldberg, in an additional concurring opinion, expresses concern for the proper interpretation and balance of the First Amendment. He notes that the First Amendment's guarantees, as applied to the states through the Fourteenth Amendment, foreclose not only laws "respecting an establishment of religion" but also those "prohibiting the free exercise thereof." He points out that these two proscriptions are to be read together, and in light of the single end which they are designed to serve.[5]

With such a vital concern for neutrality, it is important that educators and laymen alike be cognizant of the positive guidelines that emerge from the Supreme Court decisions, accompanying opinions, and a knowledgeable understanding of the history and evolution of church-state relationships.

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[4] Ibid., p. 295.

[5] Ibid., p. 305.

Guidelines Supporting Certain Religious Activity

From the careful examination of the Supreme Court action, our understanding of the history of church-state relationships, and the sifting of the literature we find guidelines flowing into a structure of understanding that will support certain religious activities in the public school.

1. Public schools are encouraged to reasonably adjust schedules to sectarian needs.[6]
2. Public schools are required to make school facilities available at appropriate times for voluntary religious activity.[7]

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[6]Justice Douglas, Zorach v. Clauson, 343 U. S. 306 at 312-14 (1952). In the majority opinion of Zorach, Justice Douglas states that the encouragement of religious instruction or cooperation with religious authorities by adjustment of the schedule of public events to sectarian needs follows the best of our traditions.

Morton v. Board of Education of City of Chicago, 216 N. E. 2d 305 (1966). The Illinois Appellate Court upheld a dual enrollment program in which certain students took all courses at the public high school except English, social studies, music, and art, which they studied at a nearby parochial school. Students received credit toward a Chicago Public High School diploma for the courses taken at the private high school.

Reed v. Van Hoven, 237 F. Supp. 48 at 53 (1965). See Appendix V, p. 72. The Court notes: "However, there do exist areas in which the interplay between government and religion does not constitute an establishment of religion. This is the field of accommodation, first expressed in the Zorach case, and explored at great length by Mr. Justice Brennan in a concurring opinion in Schempp. . . . It has also been noted in articles by leading commentators."

[7]Stein v. Oshinsky, 348 F. 2d 999 (1965). See Appendix VI, p. 75. The United States Court of Appeals, Second Circuit, held that student initiated prayers are permissible

3. Public school students may be released or dismissed from the regular public school program for religious training and activity off the school grounds.[8]

4. Students have the right to voluntary and personal prayer or Bible reading as long as such activity does not interfere or impede secular educational activity.[9]

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but subject to the judgment of school authority as to time and place.

Reed v. Van Hoven, 237 F. Supp. 48 (1965). The United States District Court in Michigan held that public school students who wish to say prayers or read scriptures according to their choice in the morning before the school day begins and after the school day ends, should be permitted to do so.

[8] Zorach v. Clauson, 343 U. S. 306 (1952).

[9] Cantwell v. Connecticut, 310 U. S. 296 at 303 (1940). Schempp-Murray, 374 U. S. 203 (1963). The equal force of the Establishment Clause and the Free Exercise Clause of the First Amendment mentioned in Cantwell plus the strong emphasis upon neutrality in Schempp support this guideline. The test suggested by Justice Clark in Schempp states that government regulation must not inhibit or advance religion and thus must protect voluntary prayer as well as the right to refrain from prayer.

Leo Pfeffer, United States Congress, Senate, Committee on the Judiciary, School Prayer, Hearings before Subcommittee, 89th Congress, 2nd Session, on S. J. R. 1948, August 1-8, 1966 (Washington, D. C.: Government Printing Office, 1966), p. 375. Dr. Pfeffer, a recognized authority in the field of church-state relations says, "The First Amendment has two parts. One part says Congress shall make no law respecting an establishment of religion and the other says no law prohibiting its free exercise. If a child felt it necessary to say a prayer before partaking of bread or milk or cookies and the state says you can't do that, that would be a violation of the free exercise clause and just as unconstitutional as the Supreme Court says in Murray it is for the teacher to say to the children that you will now say grace or read from the Bible."

5. A period of meditation provided by the public school to give the student access to free exercise of religion is in order.[10]

Justice Black, Ibid., p. 375. During the hearings for the Schempp-Murray, decision Justice Black noted, "Students have the right to practice prayer and read the Bible."

[10]Schempp-Murray, op. cit., p. 281. In his concurring opinion Justice Brennan, while speaking of moral and citizenship training says, "It has not been shown that readings from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government."

Massachusetts Senate Bill No. 734, 1966, quoted in United States Congress, Senate, Committee on the Judiciary, op. cit., p. 378. Signed into law, the bill states in part, "At the commencement of the first class each day in all grades in all public schools the teacher in charge of the room in which such class is held shall announce that a period of silence not to exceed one minute in duration shall be observed for meditation, and during any such period silence shall be maintained and no activities engaged in."

Edward W. Brooke, Massachusetts Attorney General's Opinion, April 4, 1966, Ibid. Mr. Brooke says, ". . . it is my opinion that Senate Bill No. 734 does not conflict with the provisions of the First Amendment to the Constitution of the United States. . . ."

Reed v. Van Hoven, op. cit., p. 55. This case states: "If prayer is to be said during the lunch period, it shall be a silent prayer, during a few moments of silence set aside for private meditation at the start of that period."

Willard Heckel, Dean of Rutgers Law School, quoted statement, United States Congress, Senate, Committee on the Judiciary, op. cit., p. 376. Professor Heckel says, "Now, I think clearly there is nothing unconstitutional about giving young people the opportunity, the time for silent prayer or meditation because here again, this is part of the free exercise side of the coin."

Professor Kauper, University of Michigan Law School, Ibid., p. 376. "The Supreme Court, it should be emphasized,

Guidelines for Aiding in the Development of Public Education Programs About Religion

Educators, school boards, religious leaders, and others can find guidance for the development of public education programs about religion from the sources mentioned previously.

1. The public school curriculum may include teaching:
   a. About the Bible and other religious books.
   b. About the differences between religious sects in classes in literature or history.
   c. About the contribution of religion to society in the various social sciences or the humanities.
   d. A course in comparative religion.
   e. About religion as a discipline or body of knowledge.
   f. The Bible as literature.

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has not held that there can be no prayer in the public schools. Nothing in the court's decision precludes school authorities from designating a period of silence for prayer and meditation or even for devotional reading of the Bible or any other book during this period."

Paul A. Freund, Harvard University, Ibid., p. 488. Dr. Freund says, "But in any event, if a period of brief prayer is wanted, there is a simple way to have it: A moment of silent meditation, during which each pupil may commune either in prayer or other form of solemn thought, as his upbringing and his spirit may prompt. . . ."

g. About moral issues and training in how to make moral decisions throughout the process of learning.[11]

2. Official documents such as the Declaration of Independence that make reference to Deity may be studied and recited in the public school.[12]

3. Officially espoused anthems that include the composer's profession of faith in a Supreme Being may be sung and studied in the public school.[13]

4. Shared time or dual enrollment plans are acceptable means of providing for religious education and spiritual training.[14]

5. A complete education will include an objective study of the Bible and religion.[15]

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[11] Schempp-Murray, op. cit., pp. 225, 279. The above provisions are spelled out in Justice Clark's classic statement concerning complete education with the exception of item (g), which is dealt with by Justice Brennan in his concurring opinion.

[12] Engel v. Vitale, 370 U. S. 421 at 435 (1952).

[13] Ibid.

[14] Public Law 89-10, 89th Congress, H. R. 2362, April 11, 1965, p. 5. The Elementary and Secondary Education Act of 1965 gives specific approval for dual enrollment.

Morton v. Board of Education of City of Chicago, op. cit. The Illinois Appellate Court upheld the experimental dual enrollment program organized by the Chicago School Board.

[15] Schempp-Murray, op. cit., p. 225.

Guidelines Still Unresolved

In addition to the above guidelines that seem well established, the writer elects to support these additional guidelines that have not been specifically spelled out by the courts or that have met with some disagreement. However, there is support in favor of the following items.

1. A secular ceremony such as a commencement, honor society initiation, etc., is none-the-less secular because it uses a "religious symbol" such as prayer to solemize the occasion.[16]

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[16]Justice Goldberg, Schempp-Murray, op. cit., p. 305. In Mr. Goldberg's concurring opinion he suggests that there are religious practices that the First Amendment does not intend to prohibit because there is no danger of establishment of religion from the practice. He says, "The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have a meaningful and practical impact."

Engel v. Vitale, op. cit., p. 435, n. 21. Here we read: "There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's profession of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercises that the State . . . has sponsored in this instance."

2. Although teachers must teach impartially and in a religiously neutral fashion, both students and teachers should be free to raise questions and respond to questions. Such interchange must be for the purpose of instruction and not the promotion of a particular religion.[17]

3. It is permissible for public school students to voluntarily participate in a Bible Club or similar group during an activity period provided for various activities. The club would need to result from the desires of the students and teachers would participate only to the point of keeping order.[18]

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[17]Jack A. Culbertson, "Religion and Schools, Some Issues and Action Guides," Theory Into Practice, Our Religious Heritage and the Schools, Volume IV, No. 1 (Columbus, Ohio: The Ohio State University, 1965), p. 35. Educational authorities have advocated that academic freedom and objectivity support such a guideline as the above.

Philip H. Phenix, Professor of Philosophy and Education, Teachers College, Columbia University. United States Congress, Senate, Committee on the Judiciary, op. cit., p. 644.

Dr. Sidney Marland, Superintendent of Schools, Pittsburgh, Penn., United States Congress, Senate, Committee on the Judiciary, op. cit., p. 641.

Robert L. Brackenberry, "A Case for Controversy," National Elementary Principal, April, 1963. "Impotency, not impartiality, is achieved by the teacher who keeps his own convictions hidden. . . . If he makes a virtue out of keeping his thoughts hidden, he can hardly condemn his students for wondering what he thinks or whether thinking really matters at all."

[18]This situation differs from that described in the McCollum case in that the students are involved during an activity period and not a period that is set aside strictly for religious training while those students not wishing

Just as some chemical reactions do not occur until the catalyst is added, these guidelines cannot influence educational programs in a constructive way unless at least two things occur.

First, educators, clergymen, school administrators, school board members, and other community leaders and responsible people must maintain a continuing dialogue concerning the development of public educational programs that include the proper affinity with religion. Educators, whose business is education and who are primarily concerned with the child, are in a unique position to foster the needed communication by calling the concerned people together and insisting upon continuing conversations in this area. Such communication is essential to an educational program that properly includes religion.

Rabbi Arthur Gilbert has said, ". . . only if we talk to one another will we resolve our problem."[19]

Secondly, teachers need to be prepared for the proper handling of material dealing with religion. They need to be aware of the legality of certain voluntary religious

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to participate continue with regular study or class work. No teacher from the "outside" comes in to teach, whereas, in the McCollum situation, teachers from outside religious groups came in to teach the religious classes.

Reed v. Van Hoven, 237 F. Supp. 48 (1965); Stein v. Oshinsky, 348 F. 2d 999 (1965).

[19]Rabbi Arthur Gilbert, "Major Problems Facing Schools in a Pluralistic Society," Theory Into Practice, Our Religious Heritage and the Schools, Volume IV, No. 1 (Columbus, Ohio: The Ohio State University, 1965), p. 23.

exercises. There is a need for courses in the colleges of education and for in-service programs for practicing teachers to bring religion and the public school into proper perspective. The explicit needs in the area of teacher training will emerge as experimentation and research reveal satisfactory courses in the history of religion, how to make fuller use of the Bible in the curriculum, and even satisfactory courses on the Bible itself--as one way to help fulfill the commitment and obligation of educators to teach knowledge.

Some English literature teachers have recognized the Bible as a very important source of material in the courses they are teaching. Preparation programs should be aware of the latest developments in a particular field of knowledge and then prepare teachers in light of the most up-to-date information possible and the situations that will be faced by the teachers.[20]

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[20] Ibid., p. 28.

CHAPTER V

SUMMARY OF THE STUDY

The Problem

Conflict of opinion and confusion over prayer and Bible reading in the public schools have been the order of the day since the United States Supreme Court handed down the historical Schempp-Murray school prayer decision in 1963. The reaction by educators and laymen has varied from indifference to honest efforts to meet the rulings of the high court.

The uncertainty surrounding this situation has left many public school programs with little or no reference to religion, while other areas have blindly gone ahead with that which is illegal. People have truly wondered, "What is the place of religion in the public school?"

The Purpose of the Study

The interest of this study has been to enhance the education of the youth of our country by properly focusing the place of religion in our public schools through the development of guidelines intended to help schools and communities develop "complete" educational programs with

respect to proper emphasis upon religion. At the same time, the study is concerned with what is acceptable voluntary religious activity in the public schools.

The Procedure

The procedure for this study involved an examination of the literature to gain a historical perspective of religion and the public school and the historical and current relationship between church and state. This was followed by a thorough examination of the Supreme Court cases that are relevant to the questions of the study to determine the attitude of the Supreme Court toward religion and the public school.

Following the examination of the literature and the study of the court cases, guidelines were drawn together and documented.

Implications for Education

Positive guidelines have emerged from this study. Although there are still unresolved areas, the use of these positive guidelines by educators, school boards, clergymen, and others concerned with education could lead to the following:

1. The development of public education programs that give proper recognition to "teaching about religion."
2. The improvement of existing public education programs.

3. Educational programs that more completely meet the needs of youth by providing a more well rounded education and leading to a more realistic attitude toward voluntary religious expression.
4. A better balance in the recognition of the Free Exercise and Establishment Clauses of the First Amendment.
5. An American population that is more knowledgeable and tolerant of the various religions and religious problems of the world. Hopefully, this would result in deeper world understanding--so very important in a world that is becoming more travel minded and culturally mixed.

A Look at the Results

Religion Contributes to Public Education

Historically, the literature reveals that public education in a very real sense owes its very existence to religious forces. The Puritans and other religious groups were concerned that each person should read, evaluate and interpret the Bible as well as the denominational beliefs of the particular group. It was necessary for them to establish schools to meet this need.

The public school movement started from this early action of the churches. Usually the local minister supervised the town schools.

During the last years of the colonial period and during the early period of independence, a concern for church-state separation increased steadily.

The increasing amount of pluralism has precipitated this concern to the point of a problem in most communities of America today.

Church-State Relationship in America

A study of the historical church-state relationship in America reveals unmistakable evidence that there are broad areas where an almost universally accepted understanding of church-state mutuality exists in the minds of American people.

Four major areas of alliance between church and state are tax exemptions for churches and similar institutions, draft immunity for divinity students and clergymen, government salaries for chaplains, and tax support for church-related social welfare agencies. In addition we find many other areas of harmony between church and state.

The Northwest Ordinance noted the importance of religion in the development of America, and in more recent years the legislature has re-emphasized a harmonious attitude toward religion by the provisions of the Elementary and Secondary Education Act of 1965.

Recognizing that the area of church-state relations has been a source of serious conflict, history also points

to the fact that there does exist a harmonious, warm, cooperative relationship between church and state in America. History reveals this to be a consistency from the days of the American colonies to the present time.

The United States Supreme Court: Religion in the Public School

It is significant to note the attitude of the United States Supreme Court as they have attempted to clarify the law in the several cases involving religion and public schools. The opinions of the Justices remove the notion that the inclusion of religion in the curriculum is forbidden. Instead they encourage the responsible interpretation of religion in the public school curriculum.

The concerns of the Supreme Court seem to have centered upon two distinct problems. The first was to properly interpret the relationship between the Establishment and Free Exercise Clauses of the First Amendment. The second was to distinguish between governmental action which is prohibited and governmental action which is permissible in the church-state relationship.

The action of the Court yielded several concepts that contribute to our understanding. They are as follows:

1. There should be equal concern for the Establishment and Free Exercise Clauses of the First Amendment.

2. Government may extend certain kinds of welfare aid to students attending church-related schools in situations where general aid to the parochial schools themselves would be unconstitutional. This is called the "child benefit theory."
3. The court has adopted an attitude of neutrality toward religion. This seems to replace the former concept referred to as "wall of separation."

A Positive Approach to the Problem

The literature gives considerable force to the notion that a positive reaction to the court decisions and opinions is needed by the public schools of our country. Religion is too important in the overall history of our world to be sidestepped. As a body of knowledge, it has a definite place in the curriculum. The proper way to bring it into focus is to positively look at the problem and patiently build a curriculum that does not exclude religion. At the same time we need to be careful that we protect the student's right to free exercise of religion while we are careful that a state religion is not established.

The Public Reaction to the Supreme Court Decisions

The record reflects that the public reaction to the Supreme Court rulings has been one of conflict and confusion.

Religious groups, newspapers, educational authorities, lawyers, political groups, and the lay people have divided in their positions concerning the "school prayer and Bible reading" cases.

Many attempts have been made to activate constitutional amendments to change the law, or in some cases to clarify the law. Up to this time, none have been successful.

Although efforts are being made throughout the country by concerned individuals and groups to clarify the law and insure proper respect for the holdings of the Supreme Court, much confusion and ignorance of the situation remains.

Guidelines for Action

From the careful examination of the Supreme Court action, the writer's understanding of the history of church-state relationships, and the sifting of the literature are found guidelines flowing into a structure of understanding that will help to solve some of the confusion and uncertainty that prevails in the area of religion and the public school.

The guidelines, as listed in Chapter IV of this study, fall into three categories. They are:

1. Guidelines supporting certain religious activity in the public schools.
2. Guidelines for aiding in the development of public education programs about religion.

3. Guidelines still unresolved.

Although there is favorable support for the last group of guidelines suggested, they have not been completely spelled out by the courts and have met disagreement from some authorities.

Recommendations

As this study has progressed, several recommendations have evolved and are listed at this point in the hope that others will see the need for study and action in this area of concern and will find the recommendations helpful.

1. Educators, clergymen, administrators, and other community leaders should cooperate in an effort to insure that treatment of religious ideas, values, institutions and practices is included as an integral part of curricula in subjects such as literature, social studies, and the fine arts. They should give serious attention to ways of studying the Bible, the Koran, and other religious sources that will adequately cover religion and at the same time be in harmony with the concept of neutrality that our Constitution requires. The first step might well be the development of channels of communication between the various parties involved and most especially between religious groups, both denominational and major religious bodies such as Christian, Jew, Moslem, Buddhist.

2. Continued development of the guidelines, as further legal developments and understanding emerge, is needed. It is conceivable that some of the unresolved guidelines will be resolved and that new guidelines will come out of court action in the future.
3. Preparation programs for teachers and school administrators should be cognizant of the issue of religion in the public school. Teachers need to be aware of how to teach about religion in the schools and administrators need to be knowledgeable enough to react intelligently to the vast array of situations that arise from the educational issue involved here.
4. Textbooks and curriculum materials need to be revised and written to teach adequately about religion in the public school.
5. Educators, the press, members of Congress, and knowledgeable citizens should responsibly face the task of making clear what the Supreme Court rulings mean.
6. This study has been primarily concerned with religion in the public school as it relates to the student. The writer recommends that further study be conducted dealing with the free exercise of religion as it relates to the teacher and administrator in the public school.

APPENDICES

APPENDIX I

Schempp-Murray
374 U. S. 203 (1963)

The Facts

The Schempp v. Abington case arose in Pennsylvania where a state statute required reading of verses from the Bible in public school classrooms. The United States District Court ruled that this statutory requirement was in violation of the Establishment Clause of the First Amendment. The case was appealed to the United States Supreme Court.

The Murray v. Curlett case arose in Maryland and involved the constitutionality of required Bible reading and prayer in public school classrooms. The regulation contained a clause for excusing those not wishing to participate. The Court of Appeals of Maryland ruled that there was no constitutional objection to such a regulation. The case was then taken to the United States Supreme Court, which handed down a single decision covering both cases on June 17, 1963.

The Decision

The United States Supreme Court held that Bible reading and prayer required by state statute is in violation of the Establishment Clause of the First Amendment, even when coercion is not involved.

APPENDIX II

Engel v. Vitale
370 U. S. 421 (1962)

The Facts

The New York State Board of Regents composed a short prayer intended to be interdenominational and non-offensive to all faiths. The Board of Regents recommended that the prayer be recited as part of the opening exercises in the public school classrooms throughout the state. Provision was made for nonparticipation by those not wishing to take part. Suit was brought, by a group of parents, to halt the required prayers on the grounds that such a recital of prayer was contrary to the Establishment Clause of the First Amendment.

The Decision

The United States Supreme Court ruled that such a state composed prayer is in violation of the Establishment Clause of the First Amendment. The fact that there was no evidence of coercion did not alter the case since it was based upon the Establishment Clause and not the Free Exercise Clause of the First Amendment.

APPENDIX III

Everson v. Board of Education
330 U. S. 1 (1947)

The Facts

A New Jersey statute provided that boards of education could make rules and contracts for the transportation of school children to and from school other than a public school. Ewing Township did not maintain a high school and provided for reimbursement of transportation expense of students by public carrier to both public and parochial high schools.

The plaintiff, as a taxpayer, brought suit to halt the practice of reimbursing parents of children attending Catholic parochial schools under the provisions of the First Amendment.

The Decision

The United States Supreme Court affirmed a holding of the New Jersey Court of Appeals upholding the validity of the statute on the ground that no aid was being given by this law to any religious institution but only to school children and their parents.

APPENDIX IV

Zorach v. Clauson
343 U. S. 306 (1952)

The Facts

New York City has a program which permits its public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises. A student is released on written request of his parents. Those not released stay in the classrooms. The churches make weekly reports to the schools, sending a list of children who have been released from public school but who have not reported for religious instruction.

The "released time" program involves neither religious instruction in public school classrooms nor the expenditure of public funds. All costs, including the application blanks, are paid by the religious organizations.

Suit was brought to halt the "released time" program on the grounds that the weight and influence of the public school is put behind a program for religious instruction.

The Decision

The United States Supreme Court found that there was no evidence of coercion to attend, there was no effort by

the school to establish a religious program, and participation was completely voluntary. The ruling found no offense to the Establishment Clause of the First Amendment.

APPENDIX V

Reed v. Van Hoven
237 F. Supp. 48 (1965)

The Facts

Parents of public school children brought suit against the superintendent of schools and members of the board of education to enjoin religious exercises in the public schools. The District Court in Michigan held that public school students who wish to say prayers or read scriptures according to their choice in the morning or before the school day begins and after the school day ends, should be permitted to do so, provided that they meet in a room other than their regular home room, and complete their exercise at least five minutes before the regularly scheduled class day, or do not begin until at least five minutes after completion of the regular school class day. The Court held that no bell should signify the start of prayer, and if prayer is to be said during the lunch period, it should be a silent prayer during moments of silence set aside for private meditation at the start of that period.

The Decision

The injunction to stop the religious exercises was denied, subject to the regulations suggested by the Court.

APPENDIX VI

Stein v. Oshinsky
348 F. 2d 999 (1965)

The Facts

A New York principal ordered his teachers, who were instructing the kindergarten classes, to stop the infant children from reciting simple prayers prior to refreshment time. Parents of some of the children brought action to enjoin school officials from preventing the recitation of prayers on the children's initiative.

The Decision

The United States Court of Appeals, Second Circuit, held that student initiated prayers are permissible, in light of the Free Exercise Clause of the First Amendment, but subject to the judgment of school authority as to time and place.

APPENDIX VII

Chamberlin v. Dade County
374 U. S. 487 (1963), 377 U. S. 402 (1964)

The Facts

The Chamberlin case, which arose in Florida, involved the constitutionality of the following religious practices: reading the Bible, comments on the Bible, distribution of sectarian literature to pupils, Bible instruction in the school building after school hours, recitation of sectarian prayers, observance of religious holidays, displaying of religious symbols, holding of baccalaureate services, conducting a religious census of children, and the use of religious tests in appointing and promoting teaching personnel. The Florida trial court held some of the above practices to be unconstitutional. When the case was appealed to the Florida Supreme Court, the higher court upheld the constitutionality of the practices laid before it. The case was then carried to the United States Supreme Court, which remanded the case to the Florida Supreme Court to be reconsidered in light of the Schempp-Murray decision. The Florida Court reaffirmed its previous decision and the case once more reached the Supreme Court of the United States.

The Decision

The United States Supreme Court reversed the ruling of the Florida Court insofar as prayer and Bible reading were concerned but did not pass on the other issues raised.

APPENDIX VIII

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