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# "MY WAY OR THE HIGHWAY":

# THE HAWKINS COUNTY TEXTBOOK CONTROVERSY

A Dissertation

Presented for the

Doctor of Education

Degree

The University of Tennessee, Knoxville

David W. Dellinger

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ABSTRACT

In the late summer of 1983 a small group of fundamentalist families in Hawkins County, Tennessee, raised religiously based objections to a series of reading textbooks that had been adopted for use in the county's schools. The resulting social conflict ended five years later, after two appellate court decisions in favor of the school system. This outcome was widely interpreted as a victory for academic freedom and a triumph for the nation's public schools over efforts by the religious right to censor or control the school curriculum.

This research sought to determine whether available data supported another explanation for this controversy. The intent, therefore, was to generate rather than test theory. The methodology adopted for this purpose was a grounded theory approach to qualitative analysis. There is no thesis statement, nor are there any intentionally applied theoretical assumptions. There are, however, two delimitations. First, the parents' objections and the religious beliefs upon which they were based were accepted at face value. And second, this is not a comparative study of Hawkins County's problem with other religion-in-the-schools conflicts.

Data consisted primarily of attitudes, perceptions, beliefs, values, and motives of the participants, their fellow citizens, and other observers as these were expressed

in personal interviews, pretrial depositions, court testimony, and news reports and analyses.

Data analysis led to identification of accommodation of student First Amendment free exercise rights as the central issue of the controversy: Could individuals whose religious values and beliefs conflict with segments of the school curriculum be accommodated without being forced either to forfeit their right to public education or to compromise their values and beliefs? Two models for accommodation were rejected by the school system and its supporters as a result of the complex interplay of cultural, contextual, and judicial factors. At the local level this rejection had serious personal, social, and educational consequences. It also had important civil rights implications. Educators received assurances that accommodation of student free exercise objections to the curriculum was not required. But religious minorities were given notice that their access to public schools required their sufferance of majority values.

TABLE OF CONTENTS


| CHAPTER | PAGE |
|---|---|
| I. INTRODUCTION | 1 |
| The Problem | 1 |
| Purpose of the Research | 2 |
| Methodology | 2 |
| Definitions | 16 |
| Delimitations | 22 |
| Review of the Literature | 24 |
| A Personal Note | 30 |
| II. THE SETTING | 32 |
| Geography, Demography, and Local Character | 33 |
| Local Religion | 43 |
| Local Education | 52 |
| Pressures for Educational Reform | 67 |
| Advocacy Organizations, Polarization, and Paranoia | 80 |
| The Setting: An Overview | 88 |
| III. THE BOOKS | 91 |
| The Holt Basic Reading Series | 92 |
| Hawkins County's 1983 Adoption Process | 95 |
| The Textbooks' Detractors | 105 |
| The Parents' Complaints | 124 |
| School and Community Reaction | 138 |
| A Question of Congruent Value Systems | 146 |
| The Books, Their Detractors and Defenders: An | |

CHAPTER PAGE

Overview . . . . . 150

IV. THE CONTROVERSY: THE COMMUNITY PHASE. . . . . 153

Genesis of the Controversy . . . . . 155

School Board Reaction. . . . . 164

Efforts at Accommodation . . . . . 168

"Citizens Organized for Better Schools". . . . 173

Problems for Accommodation . . . . . 181

Organizing a School Countermovement. . . . . 188

Accommodation Rescinded. . . . . 190

At an Impasse. . . . . 195

Frost's Arrest . . . . . 201

A Polarized Community. . . . . 213

The Community Phase: An Overview . . . . . 230

V. THE CONTROVERSY: THE COURTROOM PHASE . . . . . 234

The Presiding Judge. . . . . 238

The Free Exercise Issue. . . . . 240

Initial Deliberations and Findings . . . . . 245

The Trial. . . . . 249

Public Reaction. . . . . 272

Appellate Reversal . . . . . 288

Law Community Analyses . . . . . 294

The Courtroom Phase: An Overview . . . . . 304

VI. THE CONCLUSION. . . . . 309

The Rejection of Accommodation . . . . . 310

The Consequences of Nonaccommodation . . . . . 332

CHAPTER PAGE

Present and Future . . . . . 344

BIBLIOGRAPHY . . . . . 350

VITA. . . . . 368

## LIST OF TABLES


| TABLE | | PAGE |
|---|---|---|
| 1. | Individual Books in the 1983 Holt Basic Reading Series (Teachers Edition). . . . . | 93 |
| 2. | Parental Objections to Holt Basic Reading Series. . | 126 |
| 3. | Chronology of Major Events (Community Phase -- Fall 1983) . . . . . | 156 |
| 4. | Chronology of Major Events (Courtroom Phase -- Free Exercise Suit). . . . . | 235 |
| 5. | Chronology of Major Events (Courtroom Phase -- False Arrest Suit) . . . . . | 237 |

# CHAPTER I

# INTRODUCTION

## The Problem

Shortly after the opening of the fall school term in 1983, a small group of parents in Hawkins County, Tennessee, began expressing religiously based concerns about the contents of a series of reading textbooks recently adopted by the local school board. These concerns soon developed into an objection to the use of the books and a request that their children be granted an alternative text, one less offensive to the families' religious beliefs. Although a few school officials initially granted this request, the school board overruled them a short time later when it adopted a policy requiring the uniform use of textbooks throughout the county school system. The board enforced this policy by suspending several children who refused, at their parents' direction, to use the books. The parents thus faced a dilemma. They could continue to have access to the local public schools only if they consented to the use of textbooks which they feared would inculcate an alien set of values in their children. As a result, they filed suit in federal district court, seeking protection for what they believed to be the right to free exercise of their religious beliefs. A protracted legal battle ensued, ending five years later in the local school system's favor. The

interpretation widely given to the trial and its aftermath was that it represented a victory for academic freedom and the defeat of another attempt by the religious right to censor or control the public school curriculum.

## Purpose of the Research

The purpose of this research was to determine whether available data supported another explanation for the occurrence and meaning of the series of events from 1983 to 1988 which collectively were known as the Hawkins County textbook controversy.

## Methodology

In seeking an explanation for the origin, development, and meaning of this controversy, this study asked five questions: Why did the problem arise in this particular community? What was the nature of the parents' complaint? Why did the school system and the community react as they did? Was a compromise solution possible? And what were the effects of the controversy on the participants and the community?

Two considerations guided selection of a research methodology which could offer answers to these questions. First, seeking an explanation means being engaged in discovering rather than testing theory. Thus, the method needed to have this generative capability. And second, the method needed to be able to admit qualitative data from a

wide variety of sources and to organize and process the data in a manner which would promote theory development.

Grounded Theory. A method which met these considerations is grounded theory, guidelines for which can be found in The Discovery of Grounded Theory: Strategies for Qualitative Research by Barney Glaser and Anselm Strauss (1967), Theoretical Sensitivity by Barney G. Glaser (1978), and Qualitative Analysis for Social Scientists by Anselm Strauss (1987). Grounded theory methodology offers a systematic process for generating theory from data gained through social research. As a result, the theory is "grounded" in the data collected and analyzed by the researcher.[1] The type of theory generated may be either substantive (empirically based) or formal (conceptually based) (Glaser and Strauss, 32).[2] In seeking an

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[1]The type of data customarily associated with grounded theory is qualitative in nature, and so it has been with this study. Quantitative data are equally admissible, however. Glaser and Strauss explain:

> Although the emphasis on qualitative data is strong in our book, most chapters also can be used by those who wish to generate theory with quantitative data, since the process of generating theory is independent of the kind of data used. (18)

[2]Grounded substantive theory provides a data base for the development of formal theory:

> Substantive theory in turn helps to generate new grounded formal theories and to reformulate previously established ones. Thus it becomes a strategic link in the formulation and development of formal theory based on data. (Glaser and Strauss, 34)

explanation for the occurrence and meaning of Hawkins County's textbook controversy, this study has aimed at the development of substantive theory.

According to Strauss,

> The methodological thrust of the grounded theory approach to qualitative data is toward the development of theory, without any particular commitment to specific kinds of data, lines of research, or theoretical interests. So, it is not really a specific method or technique. Rather, it is a style of doing qualitative analysis that includes a number of distinct features, such as theoretical sampling and certain methodological guidelines, such as the making of constant comparisons and the use of a coding paradigm, to ensure conceptual development and density. (5)

Conceptual development begins with coding, the creation of categories for associating and grouping data. "The focus of analysis," Strauss explains, "is <u>not</u> merely on collecting or ordering 'a mass of data, but on <u>organizing many ideas</u> which have emerged from analysis of the data'" (22-23). This organization is aided by a "coding paradigm" that the researcher employs to analyze data according to "conditions" (i.e., contributing factors), "interaction among actors," "strategies and tactics," and "consequences" (Strauss, 27-28). Data collection continues during the coding process, and memo writing (a kind of dialogue of the writer with his research) begins. This triad of concurrent activities--data collection, coding, and memo writing--constitutes what Strauss referred to above as "constant comparisons."

As density begins to build within and between categories, the search for new data is largely controlled by

the developing theory, a process known as "theoretical sampling":

> Theoretical sampling is a means "whereby the analyst decides on analytic grounds what data to collect next and where to find them." "The basic question in theoretical sampling is: What groups or subgroups of populations, events, activities (to find varying dimensions, strategies, etc.)" does one turn to next in data collection. And for what theoretical purpose? "So, this process of data collection is controlled by the emerging theory." . . . This type of sampling, so essential to the grounded theory mode of analysis, is of course neither the same as is utilized in quantitative research nor subject to the same canons . . . . (Strauss, 38-39)

A prerequisite to theoretical sampling and the formulation of theory in grounded theory methodology is the development of one or more core categories, for this not only "becomes a theoretical guide to the further collection and analysis of data" (Glaser and Strauss, 40) but also is "central to the integration of the theory" (Strauss, 21). "The analyst," Strauss explains,

> constantly looks for the "main theme," for what appears to be the main concern of or problem for the people in the setting, for what sums up in a pattern of behavior the substance of what is going on in the data, for what is the essence of relevance reflected in the data.[3], [4] (35)

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[3]Glaser and Strauss explain that

> the truly emergent integrating framework, which encompasses the fullest possible diversity of categories and properties, becomes an open-ended scheme, hardly subject to being redesigned. It is open-ended because, as new categories or properties are generated and related, there seems always to be a place for them in the scheme. (41)

[4]Strauss is quoting here from Glaser's Theoretical

This main theme or core has several significant properties: centrality in relation to the other categories; frequency of appearance in the data; relevance to the other categories; "clear implications for a more general theory" if developing from within a substantive study; and allowance "for . . . maximum variation to the analysis" (Strauss, 36). As the core and other categories become saturated[5] and as an integrated framework arises out of the analysis process, theory begins to emerge. Strauss notes, "The generation of theory occurs around a core category (and sometimes more)" (34).

Method of Presentation. The method of presenting the findings developed naturally out of the research. Because the actors in the textbook controversy participated in a sequence of events which occurred within a well-defined community during a specific period of time, the situation was well suited to a case history format. Strauss explains this style's relationship to grounded theory:

> . . . a case history can be very useful if brought into very close conjunction with grounded theory. . . . The case history provides a readable and lively vehicle, full of vivid imagery, often in the actors' own words or in the on-the-spot words of the field observer--but can also provide that imagery in the context and service of a theoretical account of the descriptive materials.

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Sensitivity.

[5]A category is saturated when "no additional data are being found whereby the sociologist can develop properties of the category" (Glaser and Strauss, 61).

> The purpose of a theoretical commentary in interpreting the case history is to give a broadened picture of the particular case. The theory puts the case within a more general context of understanding what could have happened under varying conditions, therefore why this case happened in this particular way. (221)

Regardless of the admonition that "quotations are illustrations, not proofs" and therefore should be kept short (Barzun and Graff, 339), the "actors' own words" have been a vital part of this presentation. Much of the data consisted of what participants and observers wrote or said--about themselves, about others, about the situations and events taking place around them--as they strove first for understanding and later for tactical advantage. What separated these individuals and turned them into adversaries were different values, perceptions, attitudes, motives, and beliefs. Frequently these were communicated, not succinctly in a phrase or sentence, but in many sentences or paragraphs or within a dialogue of several questions and responses. At other times the richness of their descriptions offered valuable insights into the speaker, another individual, or an event. These contributions would have been lost by condensation, and understanding of participant behavior would consequently have been diminished. Therefore, those engaged in the controversy have been afforded ample opportunity to express themselves. To that extent, then, this study has some of the flavor of oral history.

Interviews. Initial sources for the events of the controversy included four years of newspaper coverage, many transcribed volumes of testimony in two federal court trials, and more than thirty pretrial depositions, some of them multivolumed, taken from participants and other interested parties. While these provided considerable data for some categories, the unfolding analysis led to other investigative techniques. The most important of these was the interview. Two considerations applied here. First, in grounded theory the researcher is not constrained by random sampling rules in the selection of interviewees. The choice of subjects is driven instead by constant comparative analysis and the process of theoretical sampling (Glaser and Strauss, 63-64; supra 5). The objectives include category saturation, new categories, and expansion of comparison groups. Second, the quality of the data gained from an interview has an indirect relationship to the time that has transpired since the events or situations discussed. All but two of the personal interviews that contributed to this study were conducted before Hawkins County's controversy had run its course. The remainder and the telephone interviews took place not more than nine months later. Thus, all interviews occurred while the events were still relatively fresh in the minds of the subjects.

The method of interviewing adopted and pursued throughout the research was "open ended." Bogdan and Taylor

(1975) provided helpful information on conducting unstructured interviews. Each session was approached with a set of questions, some general in nature, others quite specific and tailored to the interviewee's role in the controversy or position in the county. Depending on how quickly a degree of rapport was established, the interviewee tended to become more expansive, offering unsolicited observations and impressions. From that point on, an attempt was made to preserve a natural flow to the conversation, with questions developing from previous comments and observations. On some occasions the interview process resembled the "active" method described by Bellah and his colleagues in Habits of the Heart (304-5).

An important element in interviews of this nature is trust. In deference to community sensitivity to the conflict and in order to encourage those interviewees who were county residents to speak freely about people and situations, anonymity was guaranteed. This guarantee was accepted by nine individuals. Vicki Frost and Bob Mozert, the two most publicized and widely quoted of the plaintiffs declined, however. They felt that their lives had already been exposed to such a degree that nothing they said would further affect their status in the community. Mozert added, "I would prefer that you do quote me. Because I'm responsible for what I say" (Mozert Interview). And Frost observed, "I try to be as careful as I can about what I say

to say the truth" (Frost Interview). Two other interviewees, Harry Hall, a semi-retired representative of Holt, Rinehart, Winston, and Margaret Klein, a Knoxville attorney, required no protection for their remarks.

For those who desired anonymity pseudonyms were adopted by which they shall be known throughout the remainder of the study. All statements are direct quotations taken from their interviews. No other attributions will be made. What follows here is a brief description of each interviewee by his pseudonym--hopefully not enough information to expose the individual but a sufficient description to give the reader some understanding of that person's perspective.

Clay Bowers. A Hawkins County resident who grew up and was educated in out-of-state public schools and college, Bowers had family ties to the county and took over a family business there in the early 1980's. His formal education, his position in the community, his intellectual curiosity, and his powers of observation and expression more than compensated for his relatively brief residence. Bowers made his feelings known up front:

> Yes, I'm sympathetic to the plaintiffs [the fundamentalist families]. I'm sympathetic to the need for taking a good, hard look at parents' rights for helping the education system determine what to teach and for taking a good, long, hard look at what we call this separation of church and state. I think we've gone way overboard.

As the first person to be interviewed, Bowers was known to the interviewer only by his position in the community. It

was on this basis that he was selected as a possible entree to Hawkins County culture and controversy. It was a fortunate choice. Because of his knowledge of the county, its history, and its people, he became, in ethnographic terms, a kind of key informant, leading through the course of three interview sessions to a number of other sources.

Reverend Randall Clark. A second-generation pastor, Clark had lived in Hawkins County for more than a decade. He felt that his congregation, which included some teachers and school administrators, was "overwhelmingly in favor of the county school system" during the controversy. Up to the time of the interview, his children had attended school systems other than Hawkins County's.

Reverend Martin McCallister. A native Southerner, McCallister, like Clark, had lived in Hawkins County for several years prior to the interview. Also like Clark, his children had attended non-county schools. Compared to most Hawkins County residents, McCallister was rather liberal in his religious beliefs. In becoming pastor of a church in the county, he explained,

> you have to walk in and size up that congregation and listen a lot to find out where they are and what they understand and then move from that point, hopefully to progression. . . .

McCallister initially supported the school system in the controversy but confessed,

> As far as having looked at the textbooks or that kind of thing, the only thing that I knew that we were dealing with, in a real sense, was a

> rerun of the Scopes trial. You know, of creation as opposed to . . . Darwinism. That kind of thing. That was my acquaintance. . . . I thought, "Oh, my gosh! Why are we bringin' this up, resurrectin' this kind of thing?" That was about my limited--and I have to say that--that's my limited exposure and understanding of what we're dealin' with.

Harold Osborn. A native of adjacent Hancock County, Osborn explained,

> My father had come to Hawkins County in order to find work to support the family. . . . But as far as the cultural aspects and background, Hawkins and Hancock might as well be one county [which they were until 1844]. You know, we're all on the same roots.

He attended public school and graduated from high school in Hawkins County. He held bachelor's and professional degrees from universities in Tennessee and had worked in Hawkins County for most of his adult life. Having been a member of both Baptist and Methodist churches, he considered his religious views to be conservative but not fundamentalist. Osborn identified himself as a community leader and concerned citizen and was clearly a school partisan in the controversy.

Reverend William Patterson. A native of neighboring Sullivan County and a graduate of its schools, Patterson lived in Hawkins County at the time of the interview and served as pastor of a church which operated a Christian school through the twelfth grade. He also offered a "night-school program for area pastors who may not have had the privilege of pursuing more education." His own

education included a bachelor's degree from a regional institution and studies at more than one school of theology. He had, he explained, "a master's and lack six hours of having another master's. I've accumulated something like a hundred and sixty-eight graduate hours, I think, pursuing course of studies in theology and the Bible." He described his own and his church's beliefs as fundamentalist after defining that term as "one who believes the Bible to be the word of God, and it's inerrant, it's infallible, it's divine, it's inspiring. And he strongly opposes any anti-biblical people." Patterson expressed deep concern about the effects of globalism on public education in the United States. He described his own role in the controversy as a

> kind of third party that was in sympathy with the position taken after I found out the particulars of the case with the parents--what they were saying. I agreed with their contentions. But I did not think personally . . . that their position was being articulated as well as it should be.

Foster Payne. An employee of Hawkins County schools for nearly all of his adult life, Payne held bachelor's and master's degrees from regional institutions. He was born in neighboring Hancock County but observed, "Not many people stay in Hancock County." When asked how far back his family goes in the northeast Tennessee area, he replied, "The Revolution. The [Paynes] are in the United States since 1749." He identified his background as Baptist, capitalist, and conservative. "Work ethic," he explained, "is part of our family philosophy." His children

attend or have attended Hawkins County schools. He summarized his philosophy on bringing up children, "I have a strong feeling that if the parents have done their job, the apple won't fall far from the tree." This was one of the longest and certainly one of the richest interviews. At times it more nearly resembled a soliloquy, a kind of stream-of-consciousness reflection on events, people, and circumstances. Payne later referred to the session as "a catharsis."

Jim Sharp. A native and lifelong resident of Hawkins County, Sharp had graduated from local public schools and had attended regional institutions where he earned bachelor's and master's degrees plus additional graduate hours. His entire career as an educator has been with the Hawkins County school system. His local roots extended back three generations on both sides of his family. Before that, he explained, his ancestors had come from neighboring Scott County in Virginia. A Methodist, Sharp was an active member of the church his parents had attended. "I'm a firm believer in church work," he declared, "so I have a church background." Sharp added that he regards the Bible as inerrant. "I've been taught that from childhood," he said, "and I believe that."

Lester Sills. A local merchant and a member of a missionary Baptist church, Sills was a county native and

attended but did not graduate from Hawkins County schools. Another interviewee described him in these terms:

> [H]e's a storekeeper, and he reads quite a lot in the newspapers, and maybe might read Reader's Digest. And he thinks all out of reason beyond his [education]. And he stimulates . . . and he'll bring up, he'll lead conversations with any group. School teachers hang out there [in his place of business], and most anybody of our average cross section of education. . . . [M]echanics and teachers and economists or accountants, physicians maybe, set at that store and exchange ideas.

Sills's children all attended Hawkins County schools. During the interview Sills came down on the side of the county in the controversy and defended educational standards in the local schools. But he confessed,

> I'm sure that most of the time, if we'd been talkin' like over there at the store, and all of a sudden somebody come in and . . . listened a while and said, "Okay, now, you people, . . . I'd like to find out now how well informed you are," we would be just, well . . . most of what we saw in the paper and so on, usually. We hadn't done any special diggin' or took any . . . really special interest to try to find out about those people [the fundamentalist parents].

Later, he added,

> I believe, as I can remember, I'm the only one that I think I ever heard that had 'em sayin', "Well, I don't think those people were all wrong." I think they had a point, but they overdone it.

David Wilson. A journalist and East Tennessean, Wilson moved to Hawkins County and began to cover the controversy shortly after the parents had filed their complaint in federal district court. Thus he became familiar with a number of the participants and accumulated

extensive files on the lawsuit. "[I]f you wanted to understand the constitutional issues involved in the case," he said, "you would have a hard time doing that reading the accounts from some newspapers. Whereas I tried . . . to explore the constitutional issues involved as my first priority in covering the story. . . ." Raised as a Southern Baptist, Wilson no longer subscribed to any particular religious creed although he maintained a strong interest in religion. He also viewed himself as a liberal. Seeing the controversy in part as a First Amendment free exercise struggle, and feeling that the plaintiff families' position had been distorted by the press, he tended to sympathize with the parents and their cause.

Definitions

The research problem was approached with certain operational definitions in mind. But in a study of this nature, which attempts to explain human behavior in a conflict situation, the adversaries' understanding of terms used by them adds greater insight into their perceptions, motives, and beliefs than definitions imposed by the researcher. As a result, an effort has been made to allow the meaning of words such as fundamentalism, humanism, and certain legal phrases to emerge from within the research.

One term, accommodation, does require definition, however. As was explained in the discussion of grounded theory methodology, theory emerges from within a "core"

category. During the ongoing process of data coding, development of conceptual categories, and theoretical sampling, one category begins to move to a central position in the research framework. What first appears from within this category is a nucleus of the theory rather than the theory itself. This nucleus "becomes a theoretical guide to the further collection and analysis of data" and eventually develops into an integrated theory (Glaser and Strauss, 40).

During the course of this analysis of Hawkins County's controversy, several issues appeared, particularly during the early stages, to have "core" significance: pluralism and consensus in a democratic society; church and state in the public school classroom; the effectiveness of public education; parent versus state responsibilities in the education of the child; the growth and power of an educational bureaucracy; and privately defined goals versus the public good. But as the research process progressed, a single core concept emerged which incorporated and transcended all of these. That concept dealt with the problem of accommodation: could individuals whose religious values clash with segments of the school curriculum be accommodated without being required to forfeit their access to public education?

Defining accommodation is a function of the context in which it is used. At the level of the individual religious believer, accommodation involves the process of granting

room for more than one world view. It requires the kind of "cognitive bargaining" that John Davison Hunter described in his examination of the influence of modernity on religion. "In the face of the pressing dilemma posed by these institutional and symbolic components of modernity," Hunter asked, "what are the possible reactions of the average religious person with regard to his world view?" The answer, he suggested, lies in the exercise of one of three options: (1) resistance or (2) accommodation, each of which require some measure of social and mental interaction, or (3) withdrawal. Interactions occur along a "continuum of possibility" between efforts "to resist the compromising realities of modernity" and efforts "to make the best of the situation by giving in to modernity's cognitive pressures." But in the course of this "dialectical interchange," the religious world view becomes the "weaker partner." What could possibly occur is

> that the cognitive bargaining between the structures and processes of modernity and a religious belief system taking place in the arena of people's world views would result in <u>cognitive contamination</u> of the religious world view. This would be due to the massive plausibility structures available for the modern rational and secular world view and the comparatively small and fragile plausibility structures available for any form of religious world view.

As a result, "the onus of pressure would be on the adherents of the religious world view to accommodate to the cognitive constraints of modernity by modifying the content and style of their belief" (1983:15).

Once the religious adherents determine at what point on the continuum they are willing to strike a mental bargain, the question of accommodation then shifts to the level of their relationship with the surrounding community and its institutions. At this level accommodation finds new contexts and takes on different meanings.

Within the social and political framework of a community accommodation means conflict avoidance through negotiation or other peaceful methods which utilize compromise and require the subordination of some if not all individual goals and programs to a larger, transcending public interest.[6] Accommodation also serves as a cohesive social force by bringing individuals together through recognition of their mutual vulnerability. Thus, it contributes to justice, which "forms the boundary to each people's right" (Tocqueville, 250), to equality, and to mutual respect within heterogeneous communities.

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[6]One dictionary of sociological terms defines accommodation as

> a process of social adjustment in which groups in conflict with each other agree to terminate or prevent further conflict by temporarily or permanently establishing peaceful interaction. This type of social interaction allows antagonistic groups to maintain their separate identities and attitudes, with the exception of those attitudes that would lead to disruptive conflict. The degree of cooperation and domination of one group over the other may vary considerably. Conciliation, compromise, arbitration, contract, and truce are forms of this adjustment. (Theodorson and Theodorson, 3)

But accommodation should not be confused with toleration. The latter infers passivity and endurance while the former suggests positive activity toward a mutually acceptable outcome. In his examination of the relationship between the two terms, Walter Lippman concluded that

> the toleration of differences is possible only on the assumption that there is no vital threat to the community. Toleration is not, therefore, a sufficient principle for dealing with the diversity of opinions and beliefs. It is itself dependent upon the positive principle of accommodation. The principle calls for the effort to find agreement beneath the differences. (1955:172)

Within a community's legal institutions, the definition of accommodation undergoes considerable refinement when applied to church-state issues. According to constitutional scholar Laurence H. Tribe, it refers to

> practices or policies whereby government steps aside or creates an exemption in order to produce free exercise neutrality. . . . The term does not include practices whereby government affirmatively supports or endorses a particular religion. (1168n)

Tribe proposes three "arguable" "zones" of accommodation, the boundaries of which are marked by application and interpretation of the First Amendment's free exercise and establishment clauses. In the "zone of required accommodation," there is a recognition

> that government's actions impinge on different persons in dramatically different ways, so that truly even-handed treatment at times compels exempting those whose religious beliefs are exceptionally burdened by a challenged state action. (1168)

But those governmental actions which are "'arguably compelled' by free exercise are not forbidden by the establishment clause" (1168). Observing that programs offering released time for students to participate in religious practices "created a norm of religion that affected believers and nonbelievers alike" and thus "would fail the 'arguably compelled' test," Tribe nonetheless suggests that "a school is at least 'arguably compelled' to permit individual students to be absent for religious reasons" (1174).

The "forbidden zone of accommodation" applies to those governmental actions prohibited by the establishment clause, as illustrated by the incorporation of prayer within the official school routine. "When schools conduct official religious exercises," Tribe reasons, "an audience gathered by state power is lent, however briefly, to a religious cause" (1170).

The "zone of permissible accommodation" lies in the area intersected by the two religious clauses, an area where "different results are arguably mandated" (1169). Such a situation may occur "where, although free exercise values may be at stake, the free exercise clause does not mandate special treatment--resulting in a zone of permissible accommodation" (1194). An example of permissible accommodation might be after-hours use of classrooms by students for religious purposes. Tribe explains that

> the strongest argument against letting religion use school property is that a message of official endorsement will result; but that message is counteracted where a number of different groups, religious and nonreligious, are equally free to use the facilities and in fact do so. (1176)

In those situations involving church and state, however, it is important to recognize that accommodation is not simply a result of court mandate. Government agencies, like other community institutions, have a certain degree of latitude in initiating measures which can accommodate individual religious beliefs. "It is clear," Tribe maintains,

> that government may sometimes accommodate religious observances and beliefs, through purely secular means that lift government-imposed burdens. . . . To be sure, government "acknowledges" a religion whenever it accommodates that religion through such secular means without accommodating similar, non-religious beliefs and believers. But such acknowledgement is not a forbidden endorsement in and of itself; its validity turns on purpose and effect in the particular case. (1284-85)

In summary, accommodation, as the term develops in this study, is set against a background of individual religious beliefs; has church/state implications since a government institution, the public schools, is involved; and depends for its definition upon the context--individual, social/political, or legal--to which it is applied.

## Delimitations

Two restrictions were imposed upon this study. The most significant of these dealt with the ideological source

and nature of the parents' objections to the textbooks. These objections, as soon as they were expressed, became a given in the community conflict equation. In searching for explanations for a riot that breaks out at a sports event following an official's ruling, the "rightness" or "wrongness" of the decision is of little consequence to the ensuing events. It is the call itself that is significant. Correspondingly, just as the county school system's legal defense stipulated that the objections of the plaintiffs were based on religious beliefs and that these beliefs were sincerely held, this study proceeds from that same position. No effort is made to challenge or defend, beyond attempting to explain, the parents' complaints about the textbooks. The complaints are accepted at face value. As District Judge Thomas G. Hull noted in his opinion, quoting the Supreme Court's decision in Thomas v. Review Board, 101 S. Ct. 1430 (1981), "This is their religious belief. They have drawn a line, 'and it is not for us to say that the line [they] drew was an unreasonable one'" (Mozert v. Hawkins County Public Schools, 647 F.Supp. 1194 [1986]).

Second, the controversy became part of a larger religion-in-the-schools conflict which had been going on for more than three decades in communities and courtrooms across the United States. Although this study places Hawkins County's situation in a cultural and historical context,

there is no attempt to compare it to any of these other events.

Review of the Literature

In addition to the interviews, the principal sources for this study were court records and newspapers. Court records included the verbatim transcripts of trial, exhibits, depositions, and associated material in the case of Mozert v. Hawkins County Public Schools, CIV-2-83-401, and Frost v. Price, et al., CIV-2-84-453. All were held by the United States District Court, Eastern District of Tennessee, Northeastern Division, Greeneville, Tennessee. Three local newspapers, each serving a portion of Hawkins County, provided the most complete and detailed accounts of events throughout the five-year conflict. Through letters to the editor and frequent quotation in news stories they also reflected most clearly the attitudes and perceptions of their constituency. Those newspapers were two dailies, the Kingsport Times-News, Kingsport, Tennessee, and the Greeneville Sun, Greeneville, Tennessee, and a weekly, the Rogersville Review, Rogersville, Tennessee.

No full-length studies have been made of Hawkins County's troubles. A number of works, however, contributed to an understanding of the several issues which underlaid the controversy.

One of those issues deals with the problem of factions within a pluralistic democratic society. Essays Number 10

and Number 51 in The Federalist and Tocqueville's Democracy in America are essential for an appreciation of the delicate relationship between protecting the rights of minorities and imposing the will of the majority.

A related issue in any democratic society is the degree to which its members are willing to surrender private or factional interests to the public good. Political analyst Walter Lippmann (Essays in the Public Philosophy, 1955) and sociologist Robert Bellah and his colleagues (Habits of the Heart: Individualism and Commitment in American Life, 1985) shared a concern about the loss of citizen commitment to the ideals and traditions of the republic. Although coming from different perspectives and different generations, both stress the acceptance of a transcendent reality as vital to social coherence and legitimation of morality and thus to the public good. Lutheran pastor Richard John Neuhaus concurs. In The Naked Public Square: Religion and Democracy in America (1986) he argues that religion and its values have been displaced from public dialogue and decisions and that "a public ethic cannot be reestablished unless it is informed by religiously grounded values" (21). He points out that one of the main goals of resurgent Protestant fundamentalism in the 1970s and early 1980s was to install religion--and specifically fundamentalist beliefs and values--in a dominant position in the public square. Acknowledging that he hoped fundamentalists would not

succeed in this effort, Neuhaus nonetheless contends that "they have played a large part in alerting the society to the absurdities and dangers of the naked public square" (264).

As a result of this highly visible activism and the negative public response which it drew, and because the Hawkins County parents who objected to the textbooks described themselves as fundamentalists, fundamentalism became another issue of the controversy in the minds of many observers. A highly regarded introduction to the cultural roots and early history of the American Protestant fundamentalists movement is George M. Marsden's Fundamentalism in American Culture (1980). James Davison Hunter carries the development of the movement into the post-World War II decades in American Evangelicalism: Conservative Religion and the Quandary of Modernity (1983), as he examines the response of evangelicals (including fundamentalists) to the increasing pressures of rationalist and secular thought in American society. In Evangelicalism: The Coming Generation (1987) Hunter foresees a decline in the extremist nature of the movement as a result of the increasing accommodations its adherents have been forced to make to modernity. A look from within the movement at the post-World War II growth of fundamentalism is provided by Dobson and Hindson, The Fundamentalist Phenomenon: The Resurgence of Conservative Christianity (1981). Several

criticisms of American society and American public education, published during or shortly before the events in Hawkins County, have also been useful, particularly because they expressed contemporary fundamentalist concerns. These included Beverly LeHaye's Who But a Woman? (1984), an account of the formation and purposes of the conservative national organization Concerned Women for America; her husband Tim LeHaye's The Battle for the Mind (1980), a statement of the fundamentalist argument against humanism, and The Battle for the Public Schools (1983), an expression from the religious conservative viewpoint of the threat posed by secular humanism to the public schools and their youthful clientele; and Moral Majority leader Jerry Falwell's Listen America! (1980). Additionally, the oral histories and commentary contained in Paul F. Gillespie's Foxfire 7 (1982) offer a valuable introduction to religious belief in Southern Appalachia, the locale for the controversy.

Since the parents' objections to the textbooks and the subsequent litigation arose from their religious beliefs, it was inevitable that questions involving religion and the state in the public school classroom should enter the controversy. A valuable source for explanation of constitutional issues, interpretation of the opinions of individual justices, and analysis of Supreme Court precedents in this area is Harvard legal scholar Laurence H.

Tribe's American Constitutional Law (1988). Of the numerous court decisions which apply to church-state relationships in the public schools, most address establishment clause issues rather than the free exercise questions raised by the fundamentalist parents in Hawkins County. Owing to their complementary nature, however, neither area can be understood without comprehending the other. Those cases essential to this study were: the school prayer decision, Engel v. Vitale, 82 S.Ct. 1261 (1962); the decision forbidding daily Bible readings and recitation of the Lord's Prayer, School District of Abington Tp., Pa. v. Schempp, 83 S.Ct. 1560 (1963); Epperson v. Arkansas, 89 S.Ct. 266 (1968), which struck down a state law prohibiting the teaching of evolution; and the free exercise dispute between members of an Amish community and the State of Wisconsin, Wisconsin v. Yoder, 92 S.Ct. 1526 (1972). A pair of other Supreme Court decisions, although not concerned with the public schools, were significant for the precedents they lent to other free exercise cases. These were Sherbert v. Verner, 83 S.Ct. 1790 (1963), and Thomas v. Review Bd. of Indiana Employment Sec., 101 S.Ct. 1425 (1981). Two explications from an educator's perspective of the church-state problem up to the time of Hawkins County's controversy can be found in Martha M. McCarthy's A Delicate Balance: Church, State, and the Schools (1983) and her "Religion and

Public Schools: Emerging Legal Standards and Unresolved Issues," Harvard Educational Review (August 1985).

The objections which this small group of parents raised in Hawkins County were part of a much larger body of criticism Americans across the country were directing during the 1970s and early 1980s toward public education. Examples of attacks by religious conservatives have been previously noted in the works of the LaHayes and Falwell. In addition, national educational quality and effectiveness became the subject of a series of more than thirty commission and foundation reports. The most significant of these to this research, both for its timing and effect on local and state educators and for the subsequent criticisms it inspired, was the National Commission on Excellence in Education's 1983 report, A Nation at Risk: The Imperative for Educational Reform. But critiques also came from within the educational community itself. Many of these dealt with the dominance and lack of responsiveness of a growing school bureaucracy, the contradictory sets of values and educational expectations of different socioeconomic and demographic segments of American society, and the inherent structural dilemmas in a public educational system. Among this literature several works provided background for this study. They included: David Tyack's The One Best System: A History of American Urban Education (1974); Michael B. Katz's Class, Bureaucracy, and Schools: The Illusion of Educational Change

in America (1975); Alan Peshkin's Growing Up American; Schooling and the Survival of Community (1978); Eva T. H. Brann's Paradoxes of Education in a Republic (1979); and Stephen Arons' Compelling Belief: The Culture of American Schooling (1983).

A Personal Note

In any study of recent conflict, it is perhaps incumbent on the writer-researcher to reveal something of his own background as a way of making known what cultural baggage he has brought to the endeavor. In that spirit, the following is provided.

The author's roots are small town, Anglo, and Protestant. He converted to Catholicism as an adult. His wife of thirty years is Hispanic and Catholic. As a military family, they lived in ten communities, large and small, across the nation. Their four children, now all adults, attended a number of public and private schools of varying quality.

By the time the textbook controversy arose, the author had retired from the military and was teaching at a public school in a community near Hawkins County. During the months and years that followed, he heard and read almost universal condemnation of the parents, and especially of Vicki Frost, who had come to represent the parents' side of the controversy. Even after the conflict subsided, the mention of her name was enough to evoke responses of

derision, hostility, and vilification among local residents. Besides the scholarly reasons for undertaking this study, then, it became a kind of personal quest to learn more about these families, why they had aroused such antipathy, and why, in the face of such strong public opposition, they had persisted with their complaint. The reasons for this interest are not entirely clear. Possibly it was due to the author's own military and public school teaching experiences with bureaucracies. Equally possible was his growing concern for the recognition and protection of individual needs and liberties in an increasingly bureaucratic and technological society.

# CHAPTER II

## THE SETTING

The traditional adversaries in battles about value content of the school curriculum have been conservative Protestants on the one hand and liberals and humanists on the other. This lineup characterized the Scopes trial in 1925 and many of the conflicts of more recent times. But Hawkins County's textbook controversy was different. Both geographically and theologically Hawkins County lies deep within the Bible Belt. Nevertheless, a large majority of the local population supported the school board in its adoption of a basal reader series which some parents charged contained humanist and modernist values. As a result, at the local level the conflict ranked conservative Protestant against conservative Protestant. This paradox was never seriously addressed in news reports or in the commentary of editors, political analysts, or educators. Yet the contradiction requires an explanation in order to understand more fully why the controversy arose. Sources for that explanation lie within the local culture and within events that were occurring on the state and national scene at or shortly prior to the time the controversy arose. In effect, these provided the setting for the controversy.

## Geography, Demography, and Local Character

Hawkins County lies in the northeast corner of Tennessee, stretching roughly in the shape of a parallelogram from the Virginia state line southwest toward the interior of the state. It is bisected lengthwise by the Holston River and is flanked by Bays Mountain on the east and Clinch Mountain on the west, both part of the Appalachian chain. Aside from the river valley, much of the county is an upland region of rolling hills or long, steep, heavily wooded ridges embracing narrow valleys. As a result, the local residents identify with the mountains and often refer to themselves as "mountain folk."

Rogersville, the county seat and a community of about forty-five hundred, lies near the geographic center of the county, while the more rapidly growing towns of Church Hill and Mount Carmel, both of which surpass Rogersville in size, are located in the county's far northeast corner. Just across the county line from Mount Carmel is Kingsport, a city of some thirty thousand and part of an industrialized, economically aggressive, more socially fluid metropolitan complex known as the Tri-Cities Area.

Along Hawkins County's western boundary, at the economic and social antipodes of the Tri-Cities, is Hancock County, the poorest county in the state and the fifteenth poorest in the nation (1980 Census, PHC80-3). Hancock was formed in 1844 from land originally included within Hawkins

County and is, as interviewee Harold Osborn related, often referred to as "over home" because "Hawkins County was populated to a large degree by people from over in Hancock." This position of Hawkins County and the contrasting lifestyles of its neighbors--the lure of the one and the cultural intimacy with the other--are not lost on its residents, many of whom work in Kingsport but share kinship and traditions with Hancock families.

Geography has played an important role in the development of the county and its people. When the westward movement began to gain momentum in the last three decades of the eighteenth century, Hawkins County was for a brief moment a part of the frontier, receiving some of the first settlers crossing the Appalachians from the east or coming down the valleys from the north. With its southwest corner less than thirty miles as the crow flies from Cumberland Gap, the county could, in the words of Frederick Jackson Turner,

> watch the procession of civilization, marching single file--the buffalo following the trail to the salt springs, the Indian, the fur-trader and hunter, the cattle-raiser, the pioneer farmer--and the frontier has passed by. (Turner, 44)

The first permanent settlers arrived in the area in 1772 (Ramsey, 111). In 1786 the county was established and Rogersville, founded in the same year, became its county seat (Goodspeed, 875-877). According to a census taken nine years later, the county's population had grown to more than

thirteen thousand (Ramsey, 648). But as the frontier moved westward, as the great channels of migration changed, and as developing internal transportation routes tended to skirt the region, Hawkins County and its inhabitants grew more culturally and commercially isolated. Turner observed that "mobility of population is death to localism" (Turner, 56), but the obverse of that might be applied to Hawkins County. As the population became more settled, localism, the development of regional ways of thinking, a kind of retrenchment into regionally accepted norms and cultural patterns, could find fertile soil. The life-and-death struggle with a wilderness environment relaxed. Proven ways of coping and surviving began to be passed on from generation to generation, and the people settled into a rural, agricultural life.

Clay Bowers detected a lingering "frontiers attitude" among his neighbors, an attitude which he characterized by a closeness to the land and "an ability to make do" through the use of traditional, time-tested measures. He explained:

> The locals know the land. They know what will grow. They know what won't grow. Now, they may not use the latest technology and fertilization techniques and that sort of thing, but they know what works. . . . They'll do something which they think will work, which has worked for a couple of centuries.

He went on to relate a story about a group from VISTA that

> came into the area and was going to teach these people to raise a crop which they thought would be a big money-maker here. I forget what the crop was. . . . But they tried to get the people to

> raise this crop. And before it was all over, the VISTA people had learned more than the locals.

This settled agricultural life continues to exert a strong psychic influence on the population today. Bowers sees it as

> a county that from the elite down to the subculture is very much tied to the land, not like they were before, but still they farm and raise hay . . . they work in tobacco. . . . And then as you go through these cross-sections of people, you'll see the educated have these ties to the land, the subculture has ties to the land, and everybody in between. I've got twenty-seven acres and raise hay and horses myself. But then you'll go down to the poorest poor, and if they've still got the family farm, they've still got land and raise hay and tobacco.

Data of the early 1980s support these observations. Slightly over 65 percent of the county's 1980 population of nearly forty-four thousand lived in non-urban communities[7] (County and City Data Book 1983, 508). Moreover, in 1982 the county had more than twenty-two hundred farms, over half of which were less than fifty acres in size. But farm-originated personal income that year amounted to only about one-tenth that of non-farm, with tobacco accounting for nearly 54 percent of the total market value of all farm products sold (1982 Census of Agriculture, 172, 148; Vickers, 126).

Locked in the hills and tied to the land, county residents have acquired over the generations a sense of

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[7]According to the County and City Data Book 1983, an urban community was defined as having 2500 or more inhabitants (xxv).

place geographically and socially. People "know" their neighbors, not merely in the sense of acquaintance but as integral parts of a shared cultural experience. This shared experience, superimposed on the geographic and social isolation, has contributed to the population's homogeneity and its insularity. Through succeeding generations, families of early permanent settlers intermarried, forming dense networks of blood relationships and adding to the cultural bonding. Names of these residents found in the accounts of Creekmore and Ramsey--names such as Rogers, Armstrong, Price, Christian, Lawson, Brooks, and Pearson--now occupy many column inches of local telephone directories.

As a result, the county's population has become remarkably uniform. According to the 1980 census figures, its inhabitants were overwhelmingly white (nearly 98 percent), largely native Tennessean (almost 81 percent--a figure made more significant by consideration of the county's position adjacent to Virginia), strongly Baptist (76 percent of all churchgoers), and almost exclusively Protestant (more than 99 percent of all church affiliations) (1980 Census, PHC80-3; Quinn et al., 257).

Along with hereditary rights to their history and culture, the natives enjoy the security of belonging and the cohesion that such conditions instill. But the insularity also contributes to a suspicion of outsiders and a

preference for established ways of doing things. Locals are particularly sensitive to perceived criticisms. Their reaction, Clay Bowers explained, is similar to

> the case of "I can criticize my family, but don't let an outsider." Hawkins Countians are quick to criticize each other. But when an outsider comes in who does it, they're quick to maybe not support the one being criticized but to attack. And there's a difference there. . . . They'll go after the person thought making the . . . attack. They'll say, "You so-and-so, leave us alone. . . . Leave the county alone."

Rev. William Patterson, contending "that you'd have to be a native-born individual to understand," nevertheless offered this explanation:

> Anybody, regardless of whether or not he's native-born, is considered to be an outsider to some particular group of people here in the mountains. . . . Let me take my case, for instance. I was born and reared here. And when I grew up and went away in the Navy and came back, I was not an outsider. But whenever I went away to college and came back, I was. And I had to re-win the confidence of my circle that I could be trustworthy, that I hadn't changed and I hadn't forgotten who I was and where I came from.

A second pastor, Rev. Martin McCallister, describes these traits from another perspective:

> There seems to be a kind of mindset within this area that what and how we feel about things is pretty much correct, about the way everybody ought to look at life, and outside of this area everything else is in a sense kinda wrong. There's a great security in that. . . . And there is a kind of clutching to the securities of the local communities. . . . Anybody who . . . moved into this area, who . . . came in with a good attitude of wanting to contribute . . . wanting to help in communities in local ways . . . soon found out that they were running into the local power blocs. . . . You find out where the power blocs are and how they operate. It was a different set

> of rules in a sense. What were the famous seven words? "We've never done it this way before"? . . . So you find out quickly . . . that they have clung to the securities of the way that they have always done [things].

Nowhere is this tendency to support the status quo more evident in county life than in its quadrennial participation in national presidential elections. Complementing the characteristic mountain attitudes of individualism and suspicion of outside influences, county natives harbor an inherent aversion to federal government interference in local affairs.[8] Owing in part to this attitude, the county has maintained a Republican majority in every post-Civil War election except 1912, when Theodore Roosevelt's third-party candidacy split the local Republican vote just as it did in much of the remainder of the nation.

There are other indicators of Hawkins County attitudes in these election results as well. Although Populism derived much of its strength from the rural South and Midwest, and although the Democratic Party adopted much of

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[8]One regional writer offered a forceful description of this resentment:

> The Drennons had that hundred acres of land that was theirn. At least it always had been theirn. Other folks around there close to them had been having to sell their land to Smoky Mountain Park folks so the Government could have it for big bugs to come and look at, and so they could kill off all the deer that folks around here liked to hold on to for theirselves. Of course, if a body wouldn't sell his land the Government just took it whether or no. And claimed they got folks some other good place to live. (Haun, 125-26)

the Populist platform in the 1896 election, Hawkins Countians gave McKinley 62 percent of their vote. When the nation was in the depths of the Depression in 1932, nearly 55 percent of the county's voters supported Hoover. Four years later, in spite of the creation of the Tennessee Valley Authority in 1933 and the hope it extended to the region, they backed Alf Landon with 59 percent of their vote. Religion has been an important consideration as well. Aside from 1868 when Grant took 92 percent of the county's vote and the Nixon landslide of 1972, the two most lopsided elections have been those in which the Democratic candidate (Al Smith in 1928 and John Kennedy in 1960) was a Catholic. In both of these contests the Republicans took more than 70 percent of the vote. And in 1968, Alabama Governor George Wallace, running on a third-party states-rights platform, received nearly as many county votes as did Democratic candidate Hubert Humphrey (Hopkins and Lyons; Hawkins County Electoral Commission files, Rogersville, TN). In other words, county residents have tended to uphold local traditions, local control, and local religion rather than vote national issues.

Local control remains a key factor in the county's economy as well. There are a number of indications that the economic base has shifted from agriculture to industry. As was previously noted, farm income is only a fraction of nonfarm. More than a dozen industries have located in

Hawkins County since World War II, and industrial parks have been prepared to attract more firms. But Hawkins Countians know that rapid industrialization means forfeiture of control to external, moneyed sources, an influx of "outsiders," and a loss of traditional values. The county thus faces the dilemma John Crowe Ransom saw confronting the entire South half a century ago. It desires the benefits of industrialism--the employment and the increased personal and county income--without loss of its cultural heritage, its continuity with the past, and its social stability. Ransom might have been speaking of Hawkins Countians when he wrote, "The program which now engages the Southern leaders is to see how the South may handle this fire [of industrialism] without being burnt badly" (Ransom, 22). To date, the county's response has been to keep the fire low and at arm's length, a policy that finds its roots in tradition similar to that noted by the Kingsport Post:

> The Rogans, McKinneys and Armstrongs fought hard to get a railroad through Rogersville, but missed out on the Southern's main line which found its way through Morristown. One theory was that proper Rogersville folk didn't want any railroad in their town because "it would bring in a low class of people to dirty up the city." ("Rogersville Steeped in History, Is Growing at Last," 23 Sep. 1966, Supplement, 18)

Barely half of the county's 1980 work force was employed within its boundaries. The other half commuted to surrounding communities, some as far as forty miles away (Vickers, 130). There appears, then, to be an allegiance

not only to the land and to rural traditions, but, specifically, to Hawkins County land and Hawkins County traditions, especially when reduced transportation costs, lower tax rates, and other material advantages might otherwise induce workers and their families to relocate.

In response to a request to summarize the distinctive qualities of Hawkins Countians, Harold Osborn compared his neighbors to the title characters in William Faulkner's short story "The Tall Men"--men whose lives affirmed an unspoken code, understood by them but incomprehensible to the stranger in their midst; men who were tolerant and "still believed in the freedom and liberty to make or break according to a man's fitness and will to work" (Faulkner, 56). But Clay Bowers saw the frontier tradition of self-reliance now taking on a social as well as natural environment:

> You'd be surprised how many homes in this county still don't have plumbing. Still don't have running water. Still use an outhouse. But they make do and don't think anything of it. That ability to make do also goes into the fact that they learn how to milk the system. And these people who are economically depressed are much like the frontiersmen, living very close to the land. They know how to make do on the land and they know how to make do in the system. . . . They know how to raise a stink in the right place to get the commodities they need, to get the help they need. And . . . they're not wanting to get rich. They're wanting to survive.

In spite of the apparent differences these two views of Hawkins Countians convey, there is a similarity. Each characterizes the individual as concerned with preserving

personal autonomy in the face of outside forces, whether through "fitness and will to work" or through cunning and instinct for survival, within the present system. Neither set of individuals is seeking to change the status quo.

## Local Religion

For nearly all of Hawkins County's two-hundred-and-some years religion and education have played, each in its own unique way, important roles in the lives of the residents: ameliorating the dangers of a frontier environment and the monotony and frustrations of an agricultural one; holding out the promise of a better life to come; offering opportunities for social encounter and communication; gradually developing procedures for admission and norms for participation as full members within the community; and bonding the generations with common cultural traditions, understandings, assumptions, and experiences.

Institutional religion entered the area first, coming on the heels of the earliest settlers. According to local historian James Woods Rogan, a Presbyterian church was organized about 1780, six years before the county was officially established. The first resident minister was a Baptist "usually known as Father Mulkey," and the Methodists soon followed under the guidance of Bishop Asbury. Thus, Rogan concludes, "at a very early date the gospel was preached within our boundary, by representatives of the Presbyterian, Methodist and Baptist churches" (24-25).

Basically, that condition remains today, for these three denominations account for nearly 93 percent of all religious affiliations within the county (Quinn, et al., 257).

As the harshness of frontier life moderated and the county's inhabitants settled into their relatively isolated agricultural existence, changes occurred within local institutions, including religion. In his study The Social Sources of Denominationalism H. Richard Niebuhr described the effects of such a transition from frontier to agriculture on local religious life. The community generally emerges, he explained, "into a period of settled agricultural life" in which "the earlier individualism in government, economics, morality and religion makes way for trust in social institutions and forms." The spontaneity of religious conversion gives way to a "ritual form--a method on which the church and the unredeemed children of converted parents can rely for the desired results." This conversion experience, Niebuhr observed,

> is regularly expected and occurs with an almost equal regularity. The sectarian organization takes on a churchly aspect, providing the means of education in Sunday schools and other agencies, whereby the second and third generations may be instructed in the ways of the fathers.

But the religious institutions arising out of such a process don't "thereby enter into closer relationship with the religion of the older settlements. . . . Friction between metropolis and farm is substituted for the conflict between established settlement and frontier" (Niebuhr 1929, 181-82).

In many respects Hawkins County has followed this pattern. But the dominant factor in its agricultural stage has been its insularity. After the frontier had passed, the religious organizations, like the people they served, were largely cut off from the outside. Among those religions that had taken root, certain leveling influences began to erode the differences between belief structures.

One common leveling agent across the generations was marriage between members of different congregations and denominations. Biographic sketches of the lives of some of the county's most prominent nineteenth-century citizens reveal that such marriages did occur (Goodspeed, 1225-39). Harold Osborn's more recent example suggests that not only doctrine and marriage but also social and geographic reasons might have contributed to decisions regarding affiliation:

> I was raised and baptized into a Baptist church over in Hancock County, a missionary Baptist church. And my membership stayed there, even after we moved to Hawkins County. Although here in Hawkins County I attended a local Baptist church. And then after my wife and I married . . . I switched my membership from the missionary Baptist church in Hancock County to a Methodist church in Sullivan County. It was my wife's church where she had attended all of her life. We continued to attend there for I guess a period of about three years, and then we moved into Hawkins County, where we presently reside, approximately ten years ago. And at that time the local church was a missionary Baptist church, and that's where our friends attended, and so we were invited, attended, liked it, and changed our membership. She changed hers from the Methodist Church and was baptized into the Baptist Church.

True to Niebur's analysis, Hawkins County's churches did not form "closer relationships with the religion of older settlements." The possibility of external reinforcement of each religious collectivity's beliefs and practices has been minimized by physical isolation and by the independence, the deep conservatism, and the opportunity for local traditions to develop that such isolation has engendered. The "denomination to which I belong," Rev. Randall Clark explained,

> is considered a mainstream denomination. . . . At the national levels they have been perceived to be growing more liberal, and this has disturbed a lot of folks in different pockets of the country. And this is one of those areas. They don't have a real deep love for the national organization. And basically they get along by doing their own congregational work, in mission and the regional . . . area.

So insulated, the county's belief structure appears to its residents today to be relatively homogenized. Certainly one explanation is the high percentage of Southern Baptists in the community--over 76 percent of all religious affiliations (Quinn, et al., 257). But this is not the complete answer. There has been a distillation of belief, primarily from the three major denominations, resulting in a kind of pan-Protestantism with which county residents can identify. Clay Bowers estimated that "ninety percent of Hawkins County people, if you ask them if they're Christian. . . . Yes. Are you saved? Yes. Are you born again? Yes. You'll get that probably ninety percent of the time." Other

community members expressed similar views. According to Reverend Martin McCallister, "There's very little difference . . . between what I was looking at as pastor of a Presbyterian church and what some guy up the street in a Baptist church or Methodist church was lookin' at." And Methodist Jim Sharp, who professed belief in biblical literalism and inerrancy, observed that his fellow Hawkins Countians are "all basically in agreement concerning the Bible and concerning religious beliefs."

The King James Bible is universally held in highest esteem. Whether read or not, it exerts an iconic presence in the minds and homes of county residents, legitimating meaning and belief systems. Among those who do read it, the tendency toward inerrancy and literalism is strong, particularly with regard to the Genesis accounts of creation and the flood. Echoing Jim Sharp's profession, Bill Snodgrass, the county superintendent of schools, a Southern Baptist, and a leading figure in the county's reaction to the fundamentalist parents who objected to the textbooks, acknowledged that he believed "the literal interpretation of the Bible" (Snodgrass Deposition, 43).

Personal salvation is as much a rite of passage into the social community as it is a requirement for specific church membership. Through it the individual not only joins many fellow citizens who have been saved but also implicitly accepts a code of conduct which will guarantee the

community's continued stability. Thus, the parents, the church and the community have an interest in the conversion of the unredeemed. When such high stakes are involved, the adoption of ritual, as Niebuhr suggests, improves the odds. Foster Payne's account illustrates this tendency to hedge on the somewhat fragile guarantee that a sinner's conviction would spontaneously develop:

> When I was about nine years old . . . we had a revival. And it was perceived to be about the appropriate time for nine-years-old people to get saved, and so they converged on me, and I wasn't a particularly resistant individual. I just fell in with it. We went up to the mourners' bench and . . . we all got down and prayed. And then the deacons and the preachers and anybody that wanted to gathered around and asked me if I thought the Lord had saved my soul. I thought it to be probably appropriate. And in those things you kneel down, then you get up, and everybody gather[s] around and shake[s] hands--if you agreed that you had been saved. You had that kind of saving experience. Well, we always pretty well took it for granted.

There is also a widespread and unchallenged religious presence throughout other county institutions. King James Bible selections and religious commentary have been a regular feature of the weekly edition of the county's only newspaper. According to Clay Bowers, civil bodies such as the school board and court open their sessions with an invocation. And there has been a tradition, which will be examined later, of conservative, non-denominational Protestantism in the county's public schools.

Thus, the long-term effect of this leveling process has been to wear down some of the barriers and fill in some of

the gaps between the county's dominant religious groups. Labels remain important for purposes of personal identification within the community, but the distinctions are more social than theological in the minds and faith structures of the participants. One can belong to a particular congregation and still share with other residents from other congregations a common, deeply conservative religious view. Within the confines of this mountain community, then, a broader, generic religion, which might be termed Hawkins County Protestantism, assumes certain churchly characteristics and contributes still further to social cohesion and to maintenance of existing social arrangements. Standing in a positive, mutually supportive and affirming relationship with the community's secular institutions, it embraces most of the county's believers.

Given the conservative political and religious orientations of Hawkins Countians, the corollary would seem to be a widespread presence of Protestant fundamentalism throughout the community. But, from the perspective of some of its residents, this was not necessarily the case. For example, Clay Bowers, who defined fundamentalism as "Bible-believing, literally; virgin birth; actual crucifixion; rising from the dead; . . . non-evolutionist," felt that

> when you pin them [Hawkins Countians] down to being a fundamentalist, they aren't. . . . They never really thought of fundamentalist versus some other thought. Ten years ago . . . three years ago . . . pre-1983 [the year the textbook controversy broke out], if you asked them, "Are

> you a fundamentalist conservative?", "Yes" would be the answer probably. . . . I mean, the term's been out there for a long time, but as I have described it to you, when that term came along, it went away from what I have described fundamentalist is to . . . an even smaller subset of those people who think that every bit of Greek mythology is devilish; who take it so literally that they can see evil in a textbook that was meant to be for our children to read and learn; that they can see evil in talking about ESP in school. That became the definition of fundamentalist in Hawkins County.

Rev. Randall Clark, in response to a question whether fundamentalists were among the members of his congregation, said,

> Very definitely. The thing about it is, now, that terminology has become changed, and when people read definitions of fundamentalism, you'll find that . . . there are a lot of other people who adhere to them but will not call themselves fundamentalists.

Then, referring to a book from his seminary days, he quoted a definition of fundamentalism that included most of what Clay Bowers had mentioned, but added the atoning death, the doctrine of the Trinity, and the second coming of Christ. He went on to read,

> "Consequently, fundamentalism tended to be identified with blind opposition to all critical inquiry. Because of this identification, certain conservative theologians who share the above-described beliefs but who think they can be defended in a rational manner, have tended to shirk the name fundamentalist and call themselves instead evangelical conservatives."

As a result, Clark concluded,

> there is a growing trend--it's been around for a little while--of conservative people to call themselves evangelicals. And that . . . started out from differentiating from fundamentalists with

> its negative overtones. But they still are very conservative believers. . . . So I would say, then, in light of this definition, that our congregation would definitely be evangelical conservatives. With a few perhaps leaning toward fundamentalism, but not in the negative, "anti-" demeanor.

Perceptions of negativism were also an important consideration to David Wilson, who framed his definition of fundamentalism more in terms of Biblical literalism and uncompromising rigidity of world view:

> Well, like most of rural East Tennessee, Hawkins County residents are conservative and most would consider themselves to be Christian . . . and conservative. But at the same time, they don't want to be viewed as being fanatical about it. And that's of course, one of the reasons why you don't have the strong type of support for the fundamentalists in Hawkins County that has been expressed in other areas. . . . And, also, I might add that even before this [the textbook controversy] came about, they may have even considered themselves fundamentalist Christian. But now that word is not a positive thing in Hawkins County.

There was general agreement, then, that the religious views of the local citizens were not too distant from those of fundamentalism and that they might have formerly thought of themselves in such terms. But as the word acquired what were locally perceived to be negative, nonconformist connotations--the "fanatical" and "anti-" behaviors--Hawkins Countians' inherent conservatism held sway, and they backed away from identification with what they considered to be its radical implications.

Local Education

During the years in which the textbook controversy was receiving national attention, Hawkins Countians were occasionally caricatured in the media as ignorant hillbillies and unlettered bumpkins. But there are indications of a high regard held by past generations for the education of their progeny. Like churches, schools were one of the county's earliest institutions. According to Rogan, the "rough-hewn log building" which served as the first church doubled as a schoolhouse until it burned in 1805 (Rogan, 24). The following year the first of the county's several academies opened its doors in Rogersville. Later in the century Rogersville became the site for a synodical college for women and a junior college for blacks. Both of these institutions were eventually converted into public schools, a fate shared by those academies which survived into the twentieth century.

In the early years of public education the county's schools had little centralized control, leaving many communities to support their own systems. One county native who attended a two-teacher rural school from 1929 until 1937 recalled,

> We had an Ice Cream Supper every year to buy coal for heating and oil for the floors. The only thing the county furnished was glass for the windows, but some years later they did better, but not during my school years (Williams, 3).

One of the major educational efforts in the county during the 1960s and 1970s was to consolidate its schools within a centrally organized system. In 1957 there were fifty-five white and five black schools. Twenty had one teacher and nineteen had two. Names hinted at isolated rural locations: Ebbing and Flowing, Lonesome Pine, Lower Grassy, Stone Mountain, and Spruce Pine. White teenage students were divided among five community high schools. Blacks attended a single high school in Rogersville. By the time the textbook controversy occurred in 1983, schools had been desegregated and consolidated into a system of fourteen elementary, three middle, and two comprehensive high schools. Rogersville, however, continued to maintain its own independent system, complete with superintendent and a single school offering grades K through 8 ("Hawkins County-Schools" File, H.B. Stamps Memorial Library, Rogersville, TN).

Following consolidation, the opinions of Hawkins Countians toward their education system were a melange of pride and frustration against background attitudes supporting exclusive jurisdiction and cultural continuity. There was a general perception, reinforced by generations of isolation, that the schools were local in origin, function, and control. Although sharp disagreement sometimes existed on community school issues, the members of the school board, the administrators, and the teachers were widely regarded as

trustees of local attitudes and culture. Consequently, residents viewed public education as an indigenous institution which provided another rite of passage into full community membership and an important means of identifying with the local culture. But this relationship had two significant side effects. First, by offering a means of social identification, the schools also became an object of local pride and a source of sensitivity to criticism. And, second, there was an inherent reluctance to make radical changes in an institution so intimately associated with the county's past and its traditions.

Another obstacle to educational change was the school financial structure, which, in turn, was affected by local economic conditions and local priorities as well as by local conservatism. The decision-making process involving construction of the county's two comprehensive high schools in the late 1970s illustrates the problem. "We have fought long and hard to try to build our school system," Harold Osborn explained.

> Some ten or eleven years ago, when it became obvious we had to have a new school, the state was mandating the vocational education. Our county commission first decided to build one vocational school to serve the whole county. Well, we in this upper end began and organized a political fight to get two schools built, one down in the lower end, which is Cherokee [High School], and one up here, which turned out to be Volunteer. And we succeeded. The county commission then tried to change their mind, and I filed a lawsuit against them and forced them to build two schools. Subsequent to that, they were delaying, dragging their feet, and not building like they should, and

I filed another lawsuit and got the bonds released and got it built. And I had a lot of backers, a lot of help. So, then, we got our school system. It's not perfect. It's got a lot of faults. Lack of money, primarily. Personnel's great, but the money. . . .

Rev. Martin McCallister presented a similar picture of delay and inefficiency:

When I came here, the comprehensive high schools of Cherokee and Volunteer were in the processes of being built. I was told that the architectural plans for those buildings had been under consideration by the local school board for more than five years, and that there was included at least a swimming pool in both of those plans. They were going to use one set of plans for both buildings. And they diddled around in talking for five years . . . even before they turned the first spade of earth, for so long that inflation ate up the possibilities of those plans being used. In other words, the swimming pools were cut out of the plans because they waited so long to do it. And a whole program, and a whole participation with other high schools . . . was cut out. Now, it's that kind of thing of "Well the kids don't need it."

Jim Sharp felt the situation was getting worse:

Up until 1981, I think the average Hawkins Countian thought that we had a quality education program in Hawkins County. In 1981 we had consolidation take place. We moved into two new high schools which cost us almost twenty-one million dollars. At that time the county commission didn't see fit to increase the revenue. Hawkins County had to operate two new high schools plus all the schools that we had been occupying, which we turned into middle schools [and] elementary schools. We had to operate the two new buildings on about the same amount of revenue that we had been using. From that time on, 1981 on, the trend has been to think that we cannot provide a quality education program, because the revenue is not there to offer the alternate classes that should be offered in a high school such as we have now. And also to offer some of the programs in elementary and middle school, such as art and music, and then exploratory courses that should be

> offered. So, since 1981, the trend has been looking towards Hawkins County as not offering a quality program. We struggle to survive right now on what we have.

But Sharp considered the enemy to be more than the members of the county commission. The county, he felt, could not generate the funds necessary to support enlarged educational goals:

> We've about reached the saturation point on property tax. Our sales tax, if the referendum passes [a referendum which passed in August 1988, approximately a month after the interview], will be the maximum. We will receive all we can from that. But yet there's not enough revenue to fund the educational program locally that needs to be funded. Now, as far as the state goes, as the laws are now set up in the legislature, of course, they're doing all they're allowed to do for us. But there's gonna have to be a reevaluation of funding. . . . And I think that we're gonna have to have a reallocation. And the reason it makes it so difficult to us as a rural county here, we don't have any large shopping centers in Hawkins County. Well, the people in the western and southern portions go to Morristown [in adjacent Hamblen County] to do their shopping. The people in the eastern and northern portions go to Sullivan County. . . . So our sales tax . . . is almost null and void. Although we'll collect . . . about two million dollars a year in sales tax, if we had the sales tax that is filtering out of the county in other directions placed here, we would probably have two million dollars more to put in there, but we can't keep it here with no shopping centers to attract the people's attention for shopping. So the state must look at reallocating these sales taxes.

Merchant Lester Sills offered a businessman's perspective on the school revenue problem. When asked if he would favor an increase in taxes to support the schools, he replied,

> I would support a modest increase for education but not a large increase. 'Cause like I say, I don't think that our education is that bad. And I don't think we're that far behind. . . . But I'm gonna vote against the sales tax. One reason, as a merchant, you know. . . . And I noticed the paper today . . . they was urgin' to vote agin it. They say it'll cause a lot of people to go--and I believe it will. [The proposed increase in sales tax] won't bring nobody out of Sullivan [County] down here. But it'll take a few out of this county up there to spend more money--where they already spend most of it.

Attitudes toward Hawkins County schools. This inability--or some would call it unwillingness--to provide more money for the county's school system has had serious secondary effects. Professional families and families of white-collar workers transferred to positions in local firms or local institutions look for other schools in which to enroll their children, and with these children goes state funding support. Foster Payne confessed, "We lose around a hundred to a hundred and fifty students, an increasing number of students to Kingsport City. And the reason that my friends give is that they're just afraid for the opportunities lost."

Other county residents support this observation. David Wilson offered the hypothetical example of a company executive who

> gets transferred into Hawkins County from another area and has no roots in Hawkins County. If he is very familiar with the school system, he would be more likely to send . . . well, to probably even live in Kingsport and . . . send the kids there, whereas, if you've got someone who is traditionally from Hawkins County--and I mean . .

> . a couple of generations or so--that person is probably a product, a graduate of the Hawkins County school system. And he would be more likely to defend the system and to send his kids either to Hawkins County or maybe into Rogersville.

Rev. Martin McCallister, who moved with his family into Hawkins County in the late 1970s, recounted their experience in selecting a school:

> We investigated Kingsport. We also felt like we ought to give Hawkins County a fair shot, so we interviewed the principal of the local school, the elementary school, when we first came here. . . . We had called him up and said, "Can we come?" He said, "Yes, come." Gave us a date, time. We went over there and had our conversation, not in his office but in the gym. . . . There were two classes in that gym . . . that were meeting in the bleachers, one on one side of the gymnasium, one on the other, and there was also a gym class going on on the gym floor. And we were trying to hold this conversation. And he indicated to us . . . that we might want to look someplace else. So frankly, my kids have been students [in Kingsport]. . . . But any kind of tax money . . . that I paid on my house here in Hawkins County, I've seen no benefit from it as far as education is concerned. I've been payin' for lo! these many years in Kingsport--and have been happy to do it.

Old guard Hawkins Countians frequently tend to view such decisions as rejection, not only of their school system but also of their culture. The exercise of such a preference exacerbates the sensitivity they feel in the company of their more prosperous Sullivan County neighbors. McCallister told of three Methodist ministers whom he knew

> who said, "We are not going to sit around and wait for Hawkins County to decide whether we're going to have school. We're sendin' our kids into Kingsport," which strikes up a lot of hostility among local folks because you're not educating your kids in our local school system.

Others who have made similar decisions in the past or might face such questions in the future perceived this same hostility. Rev. Randall Clark recalled the decision he and his wife made to send their oldest child to high school in Kingsport:

> That wasn't for religious reasons. That was simply the inability of the county to maintain and sustain an adequate school system. And I don't hold it against the schools. That was a very hard decision for us to make. Took us over a year to make it, and we caught quite a bit of flak for it from people in our own church . . . and community. Because we were not patriotic and let our [child] go to [the local high school]. We had nothing against the . . . teachers. I think they can get as much out of anything as anyone else. Or the administrators. But the county itself simply cannot or will not adequately fund the school system to make it competitive with other educational markets. And we felt very strongly that we wanted our [child] to be able to graduate from high school and compete in a <u>good</u> university or college.

Clay Bowers expressed a similar concern about public opinion. When asked if he would send his children to the Hawkins County public schools, he replied,

> Yeah, we've talked about that. . . . Rogersville City School's perceived as being a good school. . . . What I would do is . . . now, this is one that if you're quoted on, I'm not really scared to say it, but at the same time it'd create some headaches for me . . . I would send my child to the Rogersville City School. When the child completed the eighth grade, I'm not sure what I would do.

For those who keep their children in the county school system, there are indications that their reasons and their expectations are more cultural than intellectual. In 1985 a citizens' task force was directed by the Hawkins County

school board to conduct a study of the local school system. The task force sent out questionnaires to 18,369 county residents and 425 county teachers. Among the 1,627 responses from the general public, 67 percent "felt the system meets the needs of the average student." Among the 190 teacher responses, 60 percent "did not feel that the curricula chosen for their classes needed improving" (Grabeel et al., Attachments B and C).

On the other hand, Clay Bowers was very critical of the schools:

> I think we have a poor school system in this county. And I base that not on intuition, but I base that on examples I've seen. My employees. Most of them are graduates from this school system. And we've had to teach them grammar. We've had to teach them spelling. A lot of things they just weren't taught. We've had to teach them math to be able to do the job properly--which anybody with a high school degree should have known these things. I'm talking about being able to figure up a percentage, and things like that. They didn't know. The mental capability was there, but they'd just never been taught.

Rev. Martin McCallister maintained that "the philosophy . . . as far as education is concerned, that pervades most of . . . Hawkins County is the orientation of what was good enough for me is good enough for these kids." Lester Sills' observation reinforced this sentiment:

> We hear some things, but I don't think our education here is as bad as a lot of people felt like. But I'm not sayin' that we're real good, but I believe that the students in this county are gettin' an average education, and some of them does good. . . . So I think a lot of times when you say, "Well, they got their education in Hawkins County," I think it's good enough for the

> student in this county. A lot of 'em do, they go on to college and do good things that way. I don't . . . I just don't run our schools down. I don't wanta put our schools down.

Foster Payne, whose daughter did go on to college, saw his decision to keep her in Hawkins County schools as an effort to strike a balance between academic weaknesses and cultural strengths:

> Well, my daughter wanted to go to Dobyns-Bennett [a high school in Kingsport]. She knew she was applying to Princeton and Columbia and two of the Southern schools, Furman and Suwanee, the University of the South. She wanted to go to Princeton, she thought at the time. Each one of those schools, Columbia and Princeton, required four years' foreign language of the same language. . . . So she wanted to go to Dobyns-Bennett. I don't know why, and I guess I'm a-wonderin' sometimes if I'd let my position influence my [decision], but I thought if she abandoned her own culture, she might lose among her own folks here, she might lose something more than she'd gain by having an extra year of foreign language.

From the taxpayer's or the concerned parent's point of view, it is difficult to use test results to assess the quality of local public education. Several factors contribute to this problem. Among them: the variety of tests administered; occasionally contradictory test results; and changes from year to year in test format. But an article which appeared in the Rogersville Review approximately ten months after the textbook controversy arose and two years before it came to trial was nonetheless revealing. The article reported Hawkins County results on the Tennessee Proficiency Test administered to all ninth graders during the 1983-84 school year. Quoting the state

commissioner of education as saying that the test scores "are one good indicator" of student and school performance, the article revealed that 59 percent of all county ninth graders passed both parts (language arts and mathematics) of the exam, compared to a state average of 70 percent. The community was further advised that "Hawkins County students were 117th in mathematics, 109th in language arts and 112th in passing both parts of the test out of 124 school districts tested" ("Local Students Fall Below State Mean," 14 June 1984, A-1)

For those who see the school system as an integral part of their culture, such revelations aggravate local sensitivities and sharpen distinctions between "us" and "them." County school board member Doug Cloud vented his frustration and defensiveness during deposition questioning in preparation for the textbook trial:

> Q: Have you perceived that Hawkins County School District has a bad reputation?
>
> A: My perception? Yes, Sir, I think through the years it has gotten bad publicity.
>
> Q: And in what ways?
>
> A: Just--well, it's hard to explain. I think Hawkins County as a whole has been looked down upon from people in the next county over, Sullivan County. We're always comparing to them. They're . . . a step ahead, and they have more money to spend and things like that. We've kinda been looked at as a stepchild here, and . . . I kinda resent that. I think we have a good county and a good system. We're just not--we just don't have the money to spend that the other

> systems do, and I think that's probably the basic difference. (Doug Cloud Deposition, 6)

There is in the comments of Cloud and some of the others something bordering on a siege mentality, a defensiveness and sensitivity to criticism, a satisfaction with local arrangements, but also the recognition of an inexorable tendency to be compared with others by externally derived standards and a frustration at the inability to meet those standards--hardly a favorable climate in which to entertain further criticisms.

Religion in the classroom. From the time that the first church and school shared the same log structure during Hawkins County's early years, the two institutions, religion and education, have enjoyed a special relationship unbroken by any "wall of separation." The single stipulation seemed to be that whatever religious influence was present in the schools should be nondenominational--but only to the extent that it embrace the county's three principal religious groups and reflect the county's conservative belief structure.

St. Clair Academy, opened in 1874 as a joint stock venture by citizens of a small rural community in the county, illustrates this relationship. According to one of its founders,

> There was a strong feeling expressed and inserted in the constitution that the Academy should be non-sectarian and the Committee to select teachers was to represent all

denominations. The trustees named in the deed are four Baptists, one Presbyterian, and one Methodist. (Cobb, ii, 10)

By the 1920s this relationship had carried over to the public schools: "We had devotion every morning and we would sing a couple of songs and repeat the Lord's Prayer and also we repeated the pledge to the flag" (Williams, 3).

According to county residents, religion has continued in more recent times to be a part of the school curriculum. Clay Bowers confided,

> I know we've had what they call the Bible Lady. And we've had a preacher here who gave chalk talks. . . . He uses fluorescent and black-light chalks. . . . And he's gone into schools and given his chalk talk, which is a biblical story. The area has strong Southern Baptist Christian roots. So, religion is in our schools.

Harold Osborn concurred:

> To tell you the truth, I don't know right now [if there is a religious presence in county classrooms], but I do know up through last year [1987] they were teachin' Bible. We had outsiders comin' in teachin' Bible classes. . . . You know, the school system here has a definite pro-tilt toward religion. My pastor's wife is a school teacher. If you know how well preachers are paid, most of them's wives have to do something to support the family. And typically, if they're educated, they're school teachers.

During his deposition session, school board member Doug Cloud offered a similar story:

> Q: Is there any person that's allowed to come into the schools to teach students Bible classes?
>
> A: There are some people that come in to some of the elementary schools and have little Bible classes, I guess, and it's only on a voluntary basis. . . . The people's been

doing it for forty years, I guess. But it strictly is a voluntary basis, and no one is made to attend. . . .

Q: Do the people who conduct these classes come into a classroom, a Hawkins County school building?

A: Yes, as far as I know. . . . I think that they're allowed to go to study hall or whatever. It's mostly in the early grades, elementary school level, and I think the ones that do not want to attend or the parents do not want them to attend, it's strictly voluntary. (Dough Cloud Deposition, 26-27)

Mixing religion and public education is not unique to Hawkins County, however. As the textbook controversy began to unfold in late August and early September 1983, articles in local newspapers revealed just how endemic the situation was. The superintendent of schools in neighboring Scott County, Virginia, with reluctant board approval, ended Bible classes which had been taught in some of the county's schools for more than thirty years (Ron Garland, "Scott County OKs Ending Bible Classes," Kingsport Times-News 7 Sep. 1983, 2A). In adjacent Sullivan County the superintendent confessed, "We know there will be repercussions. . . . We know people will react," as he called a halt to Bible classes that had been conducted for forty-six years in the local schools (Becky Jones, "Sullivan May End School Bible Classes," Kingsport Times-News 9 Sep. 1983, 5A). And a few months earlier the Kingsport Board of Education had declared that Bible classes could no longer be offered during the school day in city schools ("Opinion:

Don't Expel God; Expel Government," Kingsport Times-News 2 Sep. 1983, 6A).

The incentive for all of this activity appears to have been a decision in July 1983 by a federal district court (Crockett v. Sorenson, 568 F. Supp. 1422 [1983]) that a Bible study course that had been taught since 1941 in the school system of nearby Bristol, Virginia, was unconstitutional. Four years later, before the Hawkins County controversy had run its course, a suit was filed in nearby Claiborne County seeking to end the lessons taught by "Bible Ladies" in the school system. In a locally unpopular out-of-court settlement, the county and the sponsoring religious organizations agreed to stop the practice (Fred Brown, "Lawyer, Family Paying a Price for Victory," Knoxville News-Sentinel 22 May 1988, A1).

What is significant is not necessarily the presence of religion in the classrooms of neighboring public school systems but the conservative nature of this instruction, which is frequently labeled "fundamentalist," and the support that such instruction enjoyed from the surrounding populace. There was, in other words, a general public affirmation of this conservative religious instruction and of its inclusion in the local school curriculum.[9]

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[9]Another observation should be made here as well. This continued presence of religion and its local support twenty years after the Supreme Court's rulings on prayer, Bible reading, and recitation of the Lord's Prayer in public schools (infra 73n) support the conclusion of Dolbeare and Hammond

Pressures for Educational Reform

Beyond the local cultural factors, events that were taking place at the state and national levels were also destined to influence Hawkins County's textbook controversy.

Political efforts at reform. In the early 1980s, as the need for educational reform began to draw nationwide political attention, a number of state governors found it a convenient issue for gaining public support. One of the first of these was Tennessee governor Lamar Alexander, who advocated in January 1982 "a five-year program of proficiency tests for elementary pupils. . . . 'We need a way,'" he explained, "'to move the overall competency of our students in basic skills from below national averages, where it is now, to above national averages. And we need a way to measure that progress'" (Marsha Vandeberg, "Alexander Urges Boards to Start Elementary-Age Proficiency Tests," The Tennessean, 23 Jan. 1982, 1). What followed was adoption and implementation of the state's Basic Skills First Program during the next school year.

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that this practice and attitude indicated a "major disjunction between national and local affairs" in some communities (150). At least a segment of Hawkins County's elites and those responsible for the operation of the schools were not only aware of but supported the presence of religious instruction and exercises in the county classrooms for reasons that were not necessarily political. (See comments of school superintendent Snodgrass, supra 47; also see comments of school board member Doug Cloud and Snodgrass, infra 198n.) They apparently believed minority rights were protected by the "voluntary" character of the observances.

The program aimed at improving student reading and mathematics performance in grades K through 8 by identifying, sequencing, and testing certain basic skills. These skills had been determined by a task force of state educators who "identified objectives that were taught in a majority of the adopted basal textbooks, and made a decision as to what grade level they should be taught and what grade level they should be mastered" (Spalding Deposition, 18-19).

But the effects of the Basic Skills First Program extended beyond simply providing a means for improving and measuring student progress. State authority was eroding an already fragmented local autonomy, while publication of comparative test data was drawing public attention to the performance of individual districts. If Tennessee was below national averages, it was particularly embarrassing for administrators and teachers in school systems ranking below the state average.

State pressure increased the following year (1983) as Alexander reemphasized the significance he attached to this Basic Skills First Program. It became the first point--although it had already begun to be implemented--in a ten-point state education plan which he considered "the most important proposal" of his tenure (Jim O'Hara, "Pay Incentive in Alexander Schools Plan," The Tennessean, 29 Jan. 1983, 1).

Pressure from the federal level was more diffuse but began to build following publication in the spring of 1983 of A Nation of Risk, the report of the National Commission on Excellence in Education. The report assailed inadequate educational standards which had contributed to "a rising tide of mediocrity that threatens our very future as a Nation and as a people" (The Excellence Report. . ., 3) and called for sweeping improvements in the quality of the public education system. During the next five years this was followed by a host of reports from private and public sources, all seeking improved educational standards.

For even the more remote school systems, the message was clear. Public education was no longer simply a matter of local concern and local control. Programs would have to be implemented which would improve student academic performance.

Pressures from religious conservatives. Criticism of public education had been building for many years in another segment of American society. This criticism focused primarily on values rather than achievement. It had begun as part of a social protest movement among conservative Protestants, to some of whom had been applied the label "fundamentalists," during the first quarter of the twentieth century. Nativist and anti-intellectual in its origins, it had sought to preserve what it regarded as traditional American values and to protect Americans from the influence

of critical and modernist European scientific and theological thought. That part of the movement dealing with school curriculum fell into disrepute following the Scopes trial in 1925, but new challenges were to be raised some four decades later.

Several conditions accompanied the renewal of protest which marked a changing relationship between conservative Protestants and the public schools in the generation following World War II. One of these was the rapid growth of evangelicalism as a response to the challenges of modernity, especially to what was perceived to be the Bible-disaffirming qualities of science and secular, rational thought.[10] Liberal mainline congregational attendance

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[10]The transition in terminology here from early twentieth century fundamentalists to the more inclusive post-World War II evangelicals may strike some who would agree with Rev. Randall Clark's typology (supra 50-51) as erroneous. Regarding more recent efforts to differentiate between the two groups, Hunter wrote,

> Of special significance is the dissolution of the distinction between Fundamentalism and Evangelicalism as a result of the Evangelical resurgence. This is not to say that there is no longer any diversity along these lines among conservative Protestants. . . . What is different as a result of the Evangelical resurgence is that the policy differences that precipitated the bifurcation in Fundamentalism in the 1940s are no longer rigidly institutionalized. . . . By and large this militant faction of the tradition had been brought into mainline Evangelicalism. . . . (1983:46-47)

Again, it is emphasized that the fundamentalist label is employed in this study simply because that is how the parents occasionally referred to themselves and that is how they were identified by the press and the community. Although the use of this label may have elicited negative attitudes and

declined while membership in evangelical churches increased dramatically as many Americans sought in conservative Protestant theology a return to stability, order, and meaning for their lives (Roof, 276; Hunter 1983:46). In the late 1970s and early 1980s this shift toward religious conservatism was accompanied by an alliance with the political right, a combination Neuhaus described as the "religious new right." "The new right," he explained, "is the base phenomenon and the religious new right is its division in charge of marshalling the troops around what are defined as moral issues" (1986:6).

One of the moral issues which developed during this post-World War II period concerned the basis for the values being taught in the public school classrooms. Within that segment of America--white, rural, lower to middle class--from which evangelicals have arisen (Hunter 1983:49-60), the public schools had traditionally been regarded as the handmaiden of the republic and a bastion of those values necessary for the exercise of citizenship and the maintenance of civility. The Supreme Court consistently supported this idea of an intimate relationship between the schools and the health of the political and social

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responses from the families' adversaries, the issue was not fundamentalism but religiously based objections to a segment of the school curriculum.

order.[11] In one analyst's view, a kind of "social compact" had evolved:

> Families provide funds, support, trust, and their children to the school, in exchange for the understanding that school will support the values of the home and prepare their offspring to live in the world and within the family and community. If

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[11]There are numerous examples of the Supreme Court's attitude in this area. Among them:

> The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares:
>
> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Meyer v. State of Nebraska, 43 S.Ct. 627 [1922])
>
> No question is raised concerning the power of the state reasonably to regulate all schools, . . . to require that all children of proper age attend some school, . . . that certain studies plainly essential to good citizenship be taught, and that nothing be taught which is manifestly inimical to the public welfare. (Pierce v. Society of the Sisters, 45 S.Ct. 573 [1925])
>
> Public education . . . "fulfills a most fundamental obligation of government to its constituency." . . . The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions. (Ambach v. Norwick, 99 S.Ct. 1594 [1979]
>
> The role and purpose of the American public school system was well described by two historians, saying "public education must prepare pupils for citizenship in the Republic. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation." (Bethel School Dist. No. 403 v. Fraser, 106 S.Ct. 3164 [1986])

> this compact is somehow broken, if the school begins to undermine the beliefs of the family, then certain parents will withdraw their children, trust, and support. . . . (Cooper, 433)

As a result of two Supreme Court decisions in the early 1960s, religious conservatives began to conclude that the Court had separated these essential social values from their religious roots, thus inferring their secular nature, opening the school door to secularism and humanism, and thereby causing this compact to be broken.[12] One of the schools' severest critics in this regard has been fundamentalist author, Moral Majority co-founder, and pastor Tim LaHaye. LaHaye charged that the public schools have been the principal proselytizing agent among American youth for humanism, which he associates with atheism, evolution,

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[12]The two decisions were Engel v. Vitale, 82 S.Ct. 1261 (1962), which found a law requiring recitation of a state-composed prayer in the public schools to be in violation of the First Amendment's establishment clauses, and School Dist. of Abington Twp. v. Schempp, 83 S.Ct. 1560 (1963), which made a similar ruling regarding the practice of Bible reading and recitation of the Lord's Prayer in public schools.

Conservatives' efforts to reverse the effects of these decisions have continued to be frustrated. A constitutional amendment permitting voluntary prayer, proposed during President Reagan's first term, was defeated by eleven votes in the Senate in spite of a contemporary poll indicating that the majority of Americans favored such an amendment (McCarthy 1985: 299). In Tennessee in 1982 a federal district court ruled that a state law requiring that "a period of silence not to exceed one minute of duration shall be observed for meditation or prayer or personal beliefs" violated the First Amendment (Beck v. McElrath, 548 F.Supp. 1161). Three years later the Supreme Court declared unconstitutional an Alabama statute allowing a minute of silence in all public schools in the state "for meditation or voluntary prayer" (Wallace v. Jaffree, 105 S.Ct. 2479 [1985])

amorality, human autonomy, and a socialist one-world concept. Humanism gained access to the schools, he contended, due to the courts (especially the Supreme Court), the legacy of John Dewey, who "succeeded in stripping from American education its final vestiges of Christian message and purpose," and the influence of the federal government (Tim LaHaye 1980:43-46, 59-79).

Rev. William Patterson, who sympathized with the parents in their objections to the textbooks and whose church maintained a private Christian school, echoed these complaints:

> So when you look at this nation, you cannot deny the fact that is was built upon the foundation of Christianity. That held true until Madalyn Murray's decision. . . . The movers and shakers in education . . . ran into a rock wall. They could not move beyond that until 1963, and that removed the wall until the pendulum now can swing. And it's swung completely away from any kind of biblical foundation whatsoever. . . . [T]he other foundation is the foundation of man. . . . And so, as the pendulum was swinging, we're now over here in this area [the area of human standards], and I think it's gonna continue. I don't think there's anything that can stop it.[13]

Patterson explained that the "movers and shakers in education" included John Dewey and that the secular influence which Patterson now found so pervasive in the

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[13]Patterson's reference to "Madalyn Murray's decision" is an allusion to the Supreme Court's Schempp decision in 1963. The Court included with Schempp the similar case of Murray v. Curlett, brought by Madalyn Murray, a professed atheist, and her son, William J. Murray III, against the Board of School Commissioners of the City of Baltimore to discontinue a rule requiring reading the Bible and/or reciting the Lord's Prayer daily in the city's schools.

schools was, he felt, a direct result of increased state and federal control of education. But if moral conduct is to be meaningful, he contended, it must be grounded in something more stable than rational thought or majority opinion. Otherwise, it was simply a question of "whose dog's gonna hunt, yours or mine?" Reflecting on the basis of American values, Patterson asked,

> Is it wrong in society today to steal? Why, of course it is. Where do we get that? Scripture. . . . Go back to the Ten Commandments again. . . . Is it wrong to commit adultery? Of course it is. Where do we get that? From Scripture. So we talk about values, but we don't want to talk about the foundation of those values. Where does our system of justice come from? Justice comes from God's standard of justice, you see. Not from man. . . . So we want a value system that fits and governs society, but we don't want to accept the foundation of that. We want to say that man originates it. Man can determine it. Man . . . becomes his own god. That, of course, is the conclusion of evolution.

The theory of evolution figures prominently in conservative Protestant complaints for two reasons--what it implies and how it is presented. The implication, they charge, is that it relegates humans simply to the position of higher animals, separating them from their special biblical relationship to an external creator. Therefore, it negates the authority of Judeo-Christian moral absolutes and leaves the human being as the sole arbiter in moral discourse. Moreover, they complain, it is frequently presented not as theory but as fact, thus undermining parental teachings about creation and causing confusion in

the child's mind. But their efforts to counteract public school teaching of evolution have met with little more success than have their attempts to restore prayer to the classroom.[14]

Dismayed and often angered by these events, conservative Protestant attitudes toward the public schools began to change. Reactions tended to follow either of two basic patterns.

One of these was, as Cooper (supra 72-73) suggested, to form and send their children to private, often church sponsored schools. During the period from 1970 to 1985 the number of school-age (5-17) children declined across the nation from 52.5 million to just under 45 million. Public school enrollment reflected this trend with a drop of 13.4 percent in total enrollment in grades K-12 and an even

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[14]Again, conservative Protestants see the courts as having played a major role in promoting the teaching of evolution in the public schools. In 1968 the Supreme Court overturned a forty-year-old Arkansas statute prohibiting the teaching of evolution (Epperson v. Arkansas, 89 S.Ct. 266). In 1975 the Sixth Court of Appeals found unconstitutional a Tennessee law requiring that textbooks presenting evolution "shall give in the same textbook and under the same subject commensurate attention to, and an equal amount of emphasis on, the origins and creation of man and his world as the same is recorded in other theories, including, but not limited to, the Genesis account in the Bible" (Daniel v. Waters, 515 F.2d 487). In 1982, in a case which was not appealed, a federal district court judge in Little Rock overturned an Arkansas law requiring that if either evolution or "creation science" were taught in the public school classroom, "balanced treatment" must be provided for both views (McLean v. Arkansas, 529 F.Supp. 1255). Five years later, the Supreme Court struck down a similar Louisiana statute (Edwards v. Aguillard, 107 S.Ct. 2573 [1987]).

larger loss of 17 percent in grades K-8. On the other hand, private schools during the same period enjoyed an absolute gain of 4 percent in total enrollment and 3.4 percent in grades K-8 (U. S. Department of Education, Digest of Education Statistics 1989). While Catholic schools, which comprised the largest segment of private educational institutions, were experiencing a decline in numbers of both schools and students, those figures for evangelical schools soared.[15]

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[15]Two qualifications are necessary regarding the rise of private schools, and particularly schools sponsored by conservative Protestant churches, during this period. One concerns the application of such hyperbole as "soared" to this growth. In considering church school statistics, Alan Peshkin observed,

> When these figures, modest in absolute terms, are seen in the light of public school enrollment declines--"11 percent in the West while private enrollment [largely but not exclusively in Christian schools] climbed 19 percent. In the South . . . public schools declined 6 percent while private enrollment increased by 31 percent" . . .--then we understand the hyperbolic language of "dramatic growth," "resurgence," and "boom." Such language is most typically used to characterize what invariably is referred to as "the most rapidly expanding segment of American education."
>
> From all indications, the claim is true: the Christian school is a rising star. (1986:26-27)

The second qualification deals with the motivation behind this growth, the reasons parents were sending their children to private institutions instead of to the local public schools. While it is acknowledged that integration and busing may have been persuasive considerations to many families, Peshkin maintains that

> Christian schools have attained a degree of success that cannot be explained, as it has in some places, by racism alone. . . . Indeed Christian schools open and thrive in communities where there are no

Although flight of conservative Protestant children to private schools amounted to an emphatic but relatively benign means of condemning public education, the other response pattern was highly confrontational. Disturbed by the value content of the curriculum, parents attempted to force school boards and administrators not only to recognize their concerns but often to effect changes that would bring the curriculum more into line with their values and world view. Two widely publicized incidents in the 1970s illustrate the social turmoil such confrontations were capable of generating.

In Kanawha County, West Virginia, a combination of middle class and blue collar protestors, led by Alice Moore, a mother of four and the wife of a Church of Christ pastor, first succeeded in removing a sex education program from the local schools and later forced the school board to accept book adoption guidelines which

> prohibited the use of texts which invade the privacy of a child's family life, teach racial conflict, subvert the sanctity of religious, ethnic or racial group value structures, undermine patriotism, imply that alien political

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> black families. (1986:27)

Similarly, Boyer concludes,

> Between 1970 and 1977, nonsectarian private school enrollments increased by about 60 percent, although the school-age population in the United States dropped by more than 3.9 million students. While a variety of reasons have been given to account for this shift, the major one is invariably dissatisfaction with the public schools. (282)

> philosophies are superior to the American system of government, use the name of God profanely, or use vulgar language. (Kincheloe 1980:28-29)

Although Moore was personally committed to peaceful means for achieving her ends, violence, including shootings and dynamiting, became a common ingredient of the controversy. But it was this success in Kanawha County, Kincheloe suggests, that "gave conservatives around the country a new sense of confidence. They could control their own destinies and stop the tide of perceived immorality that threatened to engulf their children." And these religious conservative leaders were not, generally speaking, "irrational extremists." Instead, Kincheloe contends, they were "conservative, reasonable people operating from a philosophically consistent position. A dominant theme in the battles was the right of parents in a democratic society to control what is taught in their schools" (1983:7-8).

Overlapping slightly the events in Kanawha county, a second dispute arose among parents of students at an elementary school in Corinth, New York, where a new social science and humanities program, funded by the National Science Foundation, had been adopted. The project, entitled Man: A Course of Study (MACOS), was

> a year-long program for fifth and sixth grades using films, tapes, games, and dramatic devices to introduce children to several fundamental questions about human behavior: What is human about human beings? How did we get that way? How can we be made more so? (Nelkin, 31)

The program was "based on scientific research on animal behavior and on ethnographic studies of human behavior" (Nelkin, 31). Strong, well-organized parental complaints resulted in withdrawal of the course before the end of the school year. From this incident in Corinth "protests spread like an epidemic in 1974, and sales of the curriculum declined by about 70 percent." Within a short time controversies about MACOS had broken out in ten other states (Nelkin, 107-8).[16] As a result of these widespread and well-publicized attacks, Congress began to investigate why federal money was supporting such a project. Under heavy pressure, the National Science Foundation ultimately withdrew funding from MACOS (Nelkin, 115)[17]

Advocacy Organizations, Polarization, and Paranoia

Although religious conservatives had achieved considerable success as a result of the Kanawha County and MACOS incidents, these had been isolated, spontaneous events. But it became apparent to participants and sympathizers that organization offered the key to success.

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[16]According to Nelkin, objections that were raised during these disputes fell into four categories: "Teaching that Man Is an Animal Violates Religious Beliefs";"MACOS Teaches Disturbing Values"; "Educational Experts Undermine Parental Authority"; and "Substitutes for Traditional Education Are Not Useful" (108-9).

[17]Jerry Falwell typified conservative reaction when he condemned MACOS as "a perfect example of a closed system of government indoctrination for neutralizing the values taught by church and home" (1980:210).

As a result, those within the religious new right began forming action groups to represent and defend their views.

While referring to fundamentalists in general, Pastor Richard John Neuhaus might also have had the Kanawha County and MACOS protestors in mind when he wrote,

> They felt, and they feel, that they are responding to an assault upon their religious freedom. As Seymour Martin Lipset has put it, their activism may be viewed as an "aggressive defense." Their defense is against what they perceive as governmental actions dictated by the "secular humanists" in control of American public life. (1985:45)

An organization designed to provide such "aggressive defense," and one which came to play a significant role in the Hawkins County controversy, was Concerned Women for America (CWA), formed in 1979 by Beverly LaHaye, author and lecturer on family and marriage issues and wife of Tim LaHaye (supra 73). Originally intended to counter perceived attacks on Christian beliefs by the feminist movement, CWA spread rapidly from nine members in San Diego to more than half a million women in chapters throughout all fifty states by 1986 (data furnished to the author by Jordan Lorence, CWA staff attorney, 7 Nov. 1986). As the organization grew, its interests expanded to include "any movement that seeks to undermine or destroy the traditional family unit. More recently the battleground has centered around the education of our youth" (Beverly LaHaye, 73). Relocating its headquarters to Washington, DC, in the early 1980s, CWA developed a Congressional lobbying arm and a fulltime legal

staff to "research, prepare, and argue cases of religious freedom and family rights" (Lorence correspondence).[18]

Similar organizations sprang up on the opposite side of the politico-religious fence, alleging to protect and promote guaranteed constitutional liberties. One such organization which, like Concerned Women for America, came to play a significant role in Hawkins County's conflict was People for the American Way (PAW), founded in 1980 by a group which included television writer-producer Norman Lear, former Texas Congresswoman Barbara Jordan, theologian Martin E. Marty, former U. S. Senator from Iowa Harold E. Hughes, and the Reverend Theodore Hesburg, president of Notre Dame University. According to data provided to the author by PAW, that organization's purpose is

> to meet the challenges of discord and fragmentation with an affirmation of "the American

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[18]The activities of CWA's legal staff have included advocacy for a blind student refused state aid to study for the ministry; assistance in reaching out-of-court settlement in a Florida case in which a teacher prohibited a "second-grade girl from distributing Christmas cards with Jesus stickers on them"; and intervention on the side of congregation members in the Nebraska Seven case (CWA Litigation Status Report, 9 Oct. 1986). CWA's general legal counsel, Michael P. Farris, served as plaintiff attorney in a Washington State case in which a high school sophomore and her mother sought unsuccessfully to have an assigned literature book, The Learning Tree, removed from the school curriculum (Grove v. Mead School Dist. No. 354, 753 F.2d 1528 [1985]). And shortly before becoming involved in the Hawkins County controversy, CWA had provided legal representation for a Bristol, Tennessee, teacher, Suzanne Clark, who had been sued for one hundred thousand dollars by the National Education Association for statements she had made in a letter published in a local newspaper. Two weeks before the trial was to begin, NEA dropped the suit (Beverly LaHaye, 79-83).

> Way." The organization is dedicated to the maintenance and restoration of pluralism, individuality, freedom of thought, expression of religion, and tolerance and compassion for others.

Like CWA, People for the American Way has focused much of its effort on the public schools. Its goals include:

> encouraging the free exchange of ideas and independent thinking in our public schools, monitoring and raising public awareness of the censors' attacks on our public schools, [and] helping citizens across the country stop censorship and preserve our freedoms through community organizing and the promotion of effective book selection and reconsideration policies. (PAW brochure: "Censorship in a Free Society. It's a Bad Match")

In order to help realize these goals, PAW developed in 1983 Protecting the Freedom to Learn: A Citizen's Guide, which was designed "both to assist local communities where the freedom to learn is actively under assault and to assist others to take preventative steps before the attack begins" (Parker and Weiss, 4). Just as humanism has been the nemesis of the religious new right, so that of the left, according to Protecting the Freedom to Learn, is censorship:

> In the country today . . . there are a number of national organizations that would like to change the manner in which school decisions are made. They believe education should be a passive process that teaches students what to think, not how to think. They would like books and materials on school library shelves, as well as in public school classrooms, to reflect their narrow political and religious view of the world. In a word, the aim of such organizations: censorship. (Parker and Weiss, 10)

Finding a "dramatic increase" in the number of communities reporting active groups of censors and a "surge"

in record and book burnings, the authors designed the book to counter attacks by religious conservatives on the public school curriculum (Parker and Weiss, 10-11). They provided detailed analyses and case studies of censorship tactics and successful responses to these threats. One segment, "Organizing in Your Community," outlined step-by-step methods for building and marshaling community support.[19]

There is in the formation of these organizations considerable evidence of what historian Richard Hofstadter termed "the paranoid style in American politics." He described this as "a way of seeing the world," where "the feeling of persecution is central." But contrary to the clinical sense of persecution being directed against the individual, it is, according to his usage, "directed against a nation, a culture, a way of life whose fate affects not himself alone but millions of others." Such a person "is somewhat more rational and much more disinterested" than the

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[19]Like Concerned Women for America, People for the American Way has other resources which it also makes available to the general public. Its Legal Defense Fund offers assistance which has included amicus briefs in such cases as Louisiana's "balanced treatment" law and legal representation for the defendant school systems in the Hawkins County and Mobile, Alabama, textbook cases. Additionally, PAW offers films and videos, a 324-page "guidebook on the Radical Right" that "explains in an easy-to-read question and answer format the national Radical Right's activities and agenda," a speakers bureau which includes "knowledgeable educators, authors, librarians and religious leaders who have expertise in dealing with anti-public education threats, controversies and strategies for solution," and a national censorship resource center "to help answer your most specific questions about the anti-public education movement" (Parker and Weiss, 53).

clinical paranoid. Because he views his cause as "unselfish and patriotic," his feelings of righteousness and his moral indignation "are intensified" (Hofstadter 1965:4).[20]

Among the characteristics Hofstadter attributes to the paranoid style are the need, based upon this perceived conspiracy, for "an all-out crusade." The threat conveys a sense of apocalyptic foreboding. If the impending doom is to be averted, militant, uncompromising action must be taken:

> Nothing but complete victory will do. Since the enemy is thought of as being totally evil and totally unappeasable, he must be totally eliminated--if not from the world, at least from the theater of operations to which the paranoid directs his attention. . . . Even partial success leaves him [the paranoid] with the same sense of powerlessness with which he began, and this in turn only strengthens his awareness of the vast and terrifying quality of the enemy he opposes.

And the enemy's power derives in great part from some special source which he controls or to which he has special access (Hofstadter 1965:29-32).

The paranoid style, then,

> is, if not wholly rational, at least intensely rationalistic; it believes that it is up against an enemy who is as infallibly rational as he is totally evil, and it seeks to match his imputed total competence with its own, leaving nothing unexplained and comprehending all of reality in one overreaching, consistent theory. (Hofstadter 1965:36-37)

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[20]Kincheloe discusses this problem of paranoia (1983:13) but only with regard to what he calls the New Right. The contention here is that neither side is without its paranoid view of the other.

These characteristics were a common element in both the anti-humanist and the anti-censorship campaigns at the time of the controversy. Each side considered the other to be implacably devoted to evil goals of great consequence and to possess special powers for their realization. Conversely, each clothed itself in the armor of righteousness and perceived itself to be a kind of Horatius at the Bridge, the principal impediment to the adversary's objective--control of America's institutions, personal liberties, and cultural traditions. Thus each viewed itself as engaged in a desperate defense in a struggle often referred to as "war" or "battle" or "combat."

In her book Who But a Woman? Beverly LaHaye feared that "the battle lines are becoming more clearly defined. The forces of darkness are becoming darker. There is no neutral ground in the battle to come" (13). She implored American women to

> make the most of every opportunity. The days are evil, but you and I can stand for righteousness against the oncoming darkness. . . . [W]e have no other alternative but to wage warfare against those who would destroy our children, our families, our religious liberties. There is no other option. (137)

The humanist enemies were "going to do everything they can to preserve the grim stranglehold they have on our children. They are the priests of religious humanism and are evangelizing our children for Satan" (100).

In The Battle for the Public Schools Tim LaHaye stressed the conspiratorial nature and gravity of this threat:

> Realizing that secular humanists fully intended to use their influence to so weaken our national character that we would lose our American identity and merge with the other countries of the world in the creation of their carefully planned new world order--by the year 2000--I was compelled to do whatever I could to thwart their efforts. (10)

The "theater of operations" where this conspiracy is being played out is the public school system:

> In almost every school district across the land, humanists will actively endeavor to get atheists, free-thinkers, and other humanists elected to the local school board, enabling them to determine the policies and philosophies of the district. Why? Because they realize what we are just learning--that the public school is the greatest pipeline to the minds of 43 million of our nation's 50 million children . . . and they want to use it to infuse the religion of humanism. (56)

But fear of conspiracy is not the exclusive domain of the religious new right. Barbara Parker and Stefanie Weiss write in Protecting the Freedom to Learn,

> It is important to remember . . . that the primary source for nearly all organized school and library censorship is the Far Right. Today's Far Right has what liberal censors will never have: national organizations with local affiliates, strong financial backing, the ability to orchestrate censorship activity through national newsletters, how-to-censor citizen guides, and powerful national leaders like Jerry Falwell, Phyllis Schlafly and the Gablers. (14-15)

These resources, Parker and Weiss contend, are dedicated to a specific "long-term agenda" which

> calls for the end of public education in this country. . . . In the interim, the plan of action, is clear: The schools should be purged of books, materials and courses that encourage critical, independent thinking or classroom discussion of conflicting ideas. (12)

Like the representatives of the religious new right, their liberal counterparts feel that the fate of the nation and its political and social ideals rests in their hands. In the Preface to Protecting the Freedom to Learn PAW president Anthony T. Podesta argues:

> National organizations have spawned local activists who attack the existence of our public schools; who oppose equality of opportunity; who discourage open discussion and debate; who censor materials that conflict with their dogma and orthodoxy; and who deny all children the freedom to learn.
>
> Our Freedom to Learn Project works across the country to preserve our public schools, to prevent censorship, and to prepare our young people for a life of thinking for themselves in a pluralistic democracy. . . .
>
> More is at stake today than a novel removed from a library or an idea censored from a test, although either would be more than sufficient cause for alarm. Our future as a pluralistic democracy, where open debate and discussion are the rule, begins in our public schools. This we must preserve. May this Guide help make it possible for all students to be free to learn. (Parker and Weiss, 4)

## The Setting: An Overview

The setting in which the problem would arise and later be resolved emerges as multidimensional with several considerations coming into focus:

(1) Hawkins County had developed a distinctly homogeneous culture, molded by its past geographic, economic, and social isolation, and characterized more recently by conservatism, tradition, independence, and a preference for the status quo. At the same time the county appeared to be attempting the difficult task of breaking out of its isolation while preserving its cultural heritage.

(2) Hawkins Countians share strongly conservative Protestant religious beliefs, and these beliefs, in spite of court rulings, have continued to be transmitted in their public school classrooms. But innate conservatism also tends to cause citizens to reject beliefs outside community norms, including those beliefs which might be regarded as excessively conservative.

(3) As guardians and transmitters of the local culture, schools have long been a source of community pride and an important means of social bonding. But Hawkins County schools in the early 1980s were caught between increasing state pressures on the one hand and limited financial resources on the other. The result was an erosion of local autonomy and a public exposure to comparison with other school systems. In Hawkins County's case, this comparison was unfavorable, tending to increase local defensiveness and to exacerbate local sensitivities.

(4) Efforts statewide and nationally toward greater standardization and curricular uniformity occasionally

conflicted with traditional parental attitudes toward the education of their children.

(5) Nationwide in the 1970s and early 1980s there occurred an increasing polarization of public attitudes toward the types of values to be transmitted in the public school curriculum. This polarization was accelerated by the activities of such organizations as Concerned Women for America and People for the American Way.

(6) Within these national organizations there was evidence of what historian Richard Hofstadter referred to as the "paranoid style in American politics"--a sense of persecution resulting from perception of a threat or a conspiracy and requiring a militant response. In local Hawkins Countians' defensiveness toward their school system, there was also the hint of such paranoia.

# CHAPTER III

## THE BOOKS

Books are one of the great achievements and sustaining agents of civilization. They organize and communicate thought across generations. They have the capacity to stimulate reflection and to nourish creativity and by doing so to add to human dialogue and human achievement. And because they have the ability to promote understanding and to transmit the collected knowledge of the past, they are essential to the education of the young. But by possessing these characteristics, they also have the power to challenge accepted beliefs and to transmit alien values. They can threaten to subvert the established order, or, on the other hand, the established order can use them to inculcate and convert.

In American society, where public schools are subject to state and federal influence, where students must comply with state compulsory attendance laws, and where local tax support invests citizens with a sense of local school ownership, the problem of determining acceptability of school textbooks and the ideas, beliefs, and values they contain may have serious consequences for the community. Questions inevitably arise: By what means and by whom are books selected for use in the schools? What rationale

governs their selection? What ideas and values do they promote? Who might object to textbooks and for what reasons? When parents seek to protect their children from the contents of certain textbooks, what recourse do they have when the books bear government sanction? How should the school system and the community respond to complaints about textbooks? Such questions faced Hawkins Countians during the course of their controversy.

## The Holt Basic Reading Series

At the center of Hawkins County's controversy was the 1983 edition of Holt Basic Reading (HBR), published by Holt, Rinehart and Winston. The series consisted of fifteen student texts, seventeen teacher manuals (Table 1), and miscellaneous supplementary materials for grades K through 8. Thomas J. Murphy, a senior vice president for Holt, explained the philosophy which influenced selection of the material in the HBR books. In an essay, "More Than Reading," Murphy wrote that reading

> appears to have no explicit content of its own. Instead the content of reading seems to be borrowed from other curricular areas and from life itself--the values, culture, and mores of the people and times during which the readers are published, as well as the accumulated, recorded wisdom of the past--our literary heritage. . . .
>
> . . . It appears that the nature of today's reading programs has evolved because we want today's children, who are tomorrow's adults, to

TABLE 1

Individual Books in the 1983 Holt Basic Reading Series

(Teacher's Edition)

| Title | Grade |
|---|---|
| About Me | K |
| Hear Say See Write | K |
| Rhymes and Tales | K |
| Books and Games | K |
| Pets and People | 1 |
| Can You Imagine | 1 |
| A Place for Me | 1 |
| A Time for Friends | 1 |
| People Need People | 2 |
| The Way of the World | 2 |
| Never Give Up | 3 |
| Special Happenings | 3 |
| A Time to Wonder | 4 |
| Freedom's Ground | 5 |
| Riders on the Earth | 6 |
| To See Ourselves | 7 |
| Great Waves Breaking | 8 |

Source: Amended Joint Stipulation of Uncontested Facts
Mozert v. Hawkins County Public Schools
No. CIV-2-83-401, Stipulation 34, pp. 14-15

> have a sense of themselves as individuals and as participants in a national and world community; to understand and to be mindful of the richness of our diversity; to value life and living. (Holt Basic Reading 1983, 15:T-795)

According to a former executive editor in Holt's reading department, the series was first published in 1973, revised in 1977, and revised again in 1980 in response to certain federal mandates, perceived social trends, and shifting emphases on reading and language skills. The "major reason" for the 1983 edition, she explained, was to prepare for the California adoption proceedings that same year (Theobald Deposition, 22-23). But very few content changes were made for that edition. For example, of the seventy-three student selections in the 1977 sixth-grade reader, only three--a play and two poems--were replaced by comparable pieces in 1983. A fourth piece was eliminated and two others were modified to make them more current. Of the fourteen selections specifically addressed to teachers in 1977, eight remained intact, a ninth was modified, and five new pieces were added in 1983.

What made the 1983 edition different was technique. It was, in the words of Harry Hall, the Holt representative who sold the books to Hawkins County,

> a brand new program. It was a new approach. Not because of the content. Because of the approach. It was called the total language approach to reading. Now they call it whole language approach . . . which means the same thing. . . . And that is, you teach reading and writing and spelling and language as a language arts approach rather than

> you teach reading for an hour, and you teach spelling for an hour. . . . And it was designed, if you wanted to do that, you could teach in a two-and-a-half-hour-or-so block and teach all those subjects, not necessarily by one teacher. But when you're reading a story or working with sentences, then you did the whole thing. You learned the dictionary skills and all those things that are a part of language arts. (Hall Interview)

Tennessee's State Textbook Commission approved the 1983 HBR series in November 1982, clearing the way for adoption by local school systems. The 1977 edition had previously been approved and was still in use in a number of districts throughout the state. But, according to the official responsible for coordinating the activities of the textbook commission, only "five or seven" school districts adopted the 1983 Holt series (Gregory Deposition, 41-42). The problem, the Holt representative felt, was the innovative approach:

> See, Tennessee's very traditional. . . . Most of the systems were not really interested in it for that reason. They just couldn't see how they could possibly do it. And they couldn't, the way they were organized. (Hall Interview)

But Hawkins County, for reasons of its own, decided to adopt the Holt basic readers.

## Hawkins County's 1983 Adoption Process

The county was restricted in its selection procedures by state mandates which (1) permitted local boards to use state funds only for the purchase of books from a previously approved state list; (2) required the formation of a local

adoption committee to make textbook recommendations to the district school board; and (3) held that local systems "shall adopt one basal textbook in each subject offered . . . and no more than five supplementary texts in each subject area" (Amended Joint Stipulation of Uncontested Facts, 14 July 1986, Mozert v. Hawkins County Public Schools, CIV. No. 2-83-401, 11. In Court Clerk files, U. S. District Court for the Eastern District of Tennessee, Northeastern Division, Greeneville, TN. Hereinafter referred to as Mozert Trial Files). In Tennessee the procedure is cyclical. Textbooks for different subject areas (e.g., reading, mathematics, social studies, etc.) are considered for adoption in separate years over a six-year period. During the 1982-83 school year local boards and their adoption committees were to consider leading textbooks which would be used from the fall of 1983 until the fall of 1989.

Conforming to state regulations was only one of Hawkins County's concerns, however. The 1983 adoption proceedings provided the first opportunity to select basal readers after the consolidated high schools had been built and the remainder of the system had been reorganized. Foster Payne explained:

> Prior to that time in Hawkins County we used a little of every book in the world. We're a poor county. . . . [T]his was the opinion of the principals who had suggested that . . . we use one series of book so that if we have needs here or that we can shift books around. . . . We might have fifteen of one kind of book. Couldn't fill a class. And thirty-five of another--or whatever.

> Just a mess. We just reorganized our schools into a middle school arrangement. K-5, and 6-7-8, and so forth. Anyway, this was in the back of their minds. So . . . for example, in Surgoinsville Elementary School we had some teachers using American Book, which is a linguistics approach, and some Economy [which emphasized phonics]. And then you might have first grade using one and second grade using another one. The third grade may be back to the one, or whatever.

School officials felt, then, that the recent school reorganization demanded greater curricular continuity and uniformity than had existed in the past. Payne concluded, "we had all agreed, principals and everybody, that we wanted a series to go all the way through [from K through 8]. We wanted to aggressively target reading."

Aggressively targeting reading underscored a second problem, that of improving local reading scores, which, in turn, depended on achieving congruence between the new basal reader and the state's recently established Basic Skills First Program. To a large degree, however, local systems had been relieved by the state of the difficulty of correlating a textbook series with the 661 basic reading skills that had been identified for grades K through 8. Dr. Robert McElrath, Tennessee's Commissioner of Education, explained that

> the Department of Education assists in the evaluation of textbooks relative to the correlation of those skills among books. This is a service to classroom teachers identifying the number of skills that a particular book contains.
> . . .
> . . . The Textbook Commission and staff would evaluate, and textbook companies are required to list their correlations of skills listed in the

> book versus skills required by the Board of Education. So, if you are dealing with those skills of punctuation, a textbook company would list the pages and the activities contained within that book that will enable the reader to accomplish those goals. (McElrath Deposition, 10-11)

Local adoption committees and their school boards were free to select from the state-approved list the textbook series which they believed provided the greatest degree of correlation in the areas they needed to emphasize most. In Hawkins County's case, if the committee's choice proved felicitous and all else remained equal, reading scores should improve, perhaps substantially.

Like other publishers, Holt had correlated its 1983 series with the state's basic skills requirements. "There were some areas," the local Holt representative observed,

> where it did not emphasize things as much as the state Basic Skills First, others that we emphasized <u>other</u> things . . . but there was not a great deal of a problem, because our program really met the skills as good or better than any other reading program offered that year. It was amazing. (Hall Interview)

Given the problems Hawkins County faced and the effect that textbook decisions might have not only in helping resolve those difficulties but also in improving the county's educational image, composition of the 1982-83 reading textbook adoption committee assumed special significance. According to Foster Payne, the school system "tried to pick as many different ideas and bull-headed people" as possible. "They had," he continued,

> five elementary teachers. There were five middle-school teachers. We felt that there were other people with an interest in it, not maybe strong enough to be voting but to share their influence in a strong way . . . and those were the teachers who taught special education in the high school, which would continue to use some of the elementary [texts] . . . and in the Chapter I classes which were remediation for a third of the students who didn't get it the first time around, or in special education in the elementary schools. So we had . . . other committee people who we didn't let vote . . . but we wanted a strong input from them to the point that they would actually be present for all the discussions. . . .

When appointed in the fall of 1982, the committee consisted of ten regular members, five each from elementary and middle-schools, averaging eleven-and-a-half years teaching experience. In addition, there were five nonvoting members, all of whom were or had served as high school reading instructors. A seventh-grade reading teacher, Gay Grabeel, headed the committee (Grabeel Deposition, Exhibits 5 and 6).

Seven criteria guided the committee in its selection process, which began in January 1983 and extended over the next several weeks. Correlation with the state's Basic Skills First Program headed the list. Other criteria included applicability of the program to grades K through 8; cost versus quality; use of both phonics and sight-reading techniques; provision of materials for remedial instruction; an effective management system for teachers; and a reliable, easy-to-use student tracking system (Grabeel Deposition, 20-24).

As the selection process wore on, the committee's attention centered on basal readers published by Macmillan, Addison-Wesley, Economy, Ginn, and Holt, with no series commanding overwhelming support. "Elementary liked Macmillan, finally," Foster Payne related.

> And many liked the Economy that they'd had for the previous ten years. But Macmillan was well organized. . . . The middle schools were wanting to read for comprehension and for the pleasure of it and for the understanding of the greater things in life. . . . But anyway, Addison-Wesley flowed free for them. And you'd always hear them [the elementary-school committee members] talking about Holt, Rinehart as . . . it had a . . . little hybrid [approach], gets a little bit in word attack, especially the resource materials. If you saw a kid having trouble sounding out a certain word, you could draw from this. You'd always hear, "Well, that's not bad, but it wasn't just perfect." But you'd hear then up here [the middle-school representatives] saying, "Well, they've [Holt] got some fine literature, and know, but not just perfect." Didn't flow as free as in Addison-Wesley. This was the things that I was hearing.

Gay Grabeel confirmed this lack of agreement:

> There wasn't a horse race, actually. . . . [T]he only thing we actually talked about was that there might be a division between middle and elementary school. That elementary schools may want one book company, and middle schools might want another. . . . We later decided it would be detrimental to the school system overall. (Grabeel Deposition, 44-45)

Second-grade teacher Glenda Tate, the only committee member besides Gay Grabeel to be deposed, reflected this lack of accord as she described her own preferences:

> Q: In your personal opinion, how did Holt readers do?

A: I remember, I liked Economy first and Macmillan second, and I don't remember what order the others came in in my mind.

Q: Holt was down on the list?

A: U-huh. (Yes.)

Q: And tell me your evaluation of the Holt books? . . .

A: I just liked the other two better. I mean . . . I liked Economy and I liked Mcmillan. I don't remember specific things that I disliked so much about Holt. It's just that I liked those two better.

Q: What do you think of the Holt books now?

A: I like them better than I thought I would.

Q: And why is that?

A: They're organized better than I had thought when I went through them. The children like them. (Tate Deposition, 24-25)

Although the controversy that lay just a few months in the future was to concentrate on the values conveyed throughout the Holt series, both Grabeel and Tate indicated that values had not been an important consideration to the committee:

Q: Did you weigh the content of the books, as far as the type of information that was being conveyed in the various books, as any point of the decision that you made . . . in this process?

A: It was not a matter of discussion. (Grabeel Deposition, 46)

Q: When you personally were evaluating the textbooks, did you evaluate them at all as to how they presented religion?

A: No.

Q: Did you evaluate them on how they dealt with race relations?

A: I remember noticing that different children were pictured in the books. . . .

Q: You mean different races?

A: Different races were pictured in the books. . . .

Q: Did you evaluate the books on whether they showed women in traditional or non-traditional roles?

A: No.

Q: Or did you evaluate the books on what they had to say about evolution or creationism?

A: No.

Q: To the best of your recollection, were any of these subjects discussed at the Textbook Committee meetings?

A: Not that I recall.

Q: Did you discuss at the committee meetings how the various books related to the basic skills?

A: Yes. (Tate Deposition, 30-31)

As the weeks passed, the committee missed two deadlines for making its recommendation to the school board. Finally, the decision hinged on reports of results in other school systems. "Then I'd heard this all-important thing . . .," Foster Payne recalled.

> The scores had gone up in Hamblen County when they'd gone from Economy [to Holt]. . . . I mentioned that to these people [the committee], and it [Holt] was the second choice. We had the little things where we'd taken straw votes and so forth. Well, it just clicked. Half an hour, everybody had agreed Holt and Rinehart. Had their good management system, which was one of the

> things we wanted. Incidentally, they had a computerized management system, which I liked the idea of. . . . Hadn't even seen any demonstration. Turned out, it was a year yet to come in perfection. So it was agreed.

Gay Grabeel offered a similar account:

> . . . [T]he Committee requested supervisors to contact surrounding counties as to the reading series they were presently using and . . . gather opinions respective to strengths and weaknesses of the series they were using. On the basis of this investigation we were informed that several of the school systems that had adopted Holt, Rinehart series of books experienced an improvement in the reading skills of their students. (Affidavit of Gay Grabeel, 8 Dec. 1983, Exhibit No. 85, Mozert trial files)

On May 12, 1983, more than four months after the textbook adoption committee had begun its deliberations, the Holt, Rinehart, Winston basal reading series was formally recommended to the Hawkins County School Board for adoption and use commencing at the beginning of the following year. But the Board's action was not without its unusual aspects. Harry Hall explained:

> I was told in a few weeks . . . that I had been selected, but it had to have board approval. . . . And they had a meeting and asked me if I'd come back in and talk to . . . the board of education . . . about the books. This had never happened--never happened. . . . [I]t was a regular board meeting in which everyone was invited. . . . And there was not only the board there but committee members were there. . . . There were probably a hundred people there. . . . The room was full. So then they . . . said they were considering the program we had listed and asked me if I would make a few remarks . . . like five minutes or so. And I just told them generally the philosophy of the program. They were more interested in what extra things that we were supplying that they wouldn't have to pay for. . . . And there were a lot of 'em. So I went through that in quite some detail.

> And then they asked for remarks from the audience. And no one said anything. A couple of the people who were on the committee, I think, remarked that they had examined the programs thoroughly and they had decided that this was the best one. There had not been one negative thought about it. . . . And so they asked for a vote, and they voted on it and passed it with no dissension at all. And then we implemented the program. (Hall Interview)

The board, by its approval, committed approximately seventy-three thousand dollars in order to purchase the Holt readers for use throughout its system in grades K through 8 (Amended Joint Stipulation . . ., 15). Foster Payne observed that "this was probably one of [the board's] richer understandings of the adoption process and what it might hope to do and all that. Providential as it was. . . ."

In spite of its conservatism, then, Hawkins County had been moved by three considerations to adopt Holt's innovative program--the local school system reorganization, the adoption by the state of its Basic Skills First Program, and a growing concern about the reading performance of its students. Strategies to deal with these problems, school officials and committee members believed, lay in the area of technique--the reading method employed, the management systems used, the degree of textbook correlation with Basic Skills, the availability of remedial programs, and a continuity of approach from kindergarten through the eighth grade. There is no indication that the committee gave any significant weight in its deliberations to either the value

content of the books or their effectiveness in communicating and inculcating civic and social values.

The Textbooks' Detractors

If Hawkins County's textbook selection committee and its school administrators didn't focus on the values contained in the Holt readers, a small group of parents and citizens did, and they soon brought their concerns to the attention of the community. This had immediate consequences for both groups.

The parents' complaints indirectly challenged local educators' judgment and their competence, requiring at least one of three responses: an admission of culpability; a vigorous defense of their decision and of the textbooks; or an attack on the books' detractors and the legitimacy of their claims. For reasons that will be examined in Chapter IV, they chose a strategy combining the latter two responses.

The handful of parents who initiated the objections and saw the case through to the end were the subject of considerable controversy themselves. As the case developed, they were branded as "extremists" and "outsiders" and were portrayed as part of a larger conspiracy being controlled from outside. But Clay Bowers discounted such theories. "[S]ome people," he said,

> tend to make you believe a bunch of outsiders came in because they knew they could pick on Hawkins County. You'll hear that. Believe me, you'll

> hear it at some point. And I don't believe that's true. A bunch of outsiders . . . half outsiders who happened to come along and . . . it was a point in their life when . . . you can call it coincidence, you can call it circumstances, you can call it providential, whichever word you want to pick, depending on which group you're talking to, were convicted at that time that these textbooks were not what they wanted their children to read. . . . They were convicted at that time. I don't think they came here to pick a fight with Hawkins County. It was just a time in their life . . . when they reached the conviction . . . in their minds.

Journalist David Wilson agreed. During his reporting on the controversy, he uncovered no evidence of a conspiracy. "[T]here are some," he explained,

> who would say that there was an intentional effort to bring that controversy about in Hawkins County. Jennie Wilson's daughter, Rachel . . . Baker moved from Sullivan County into Hawkins County right before the . . . school year began in 1983 [in reality, it was in October 1983] where these complaints were raised. It's entirely possible, and other than that fact alone, I have no evidence that there was an intentional effort to target Hawkins County as the place for fundamentalists to make their stand. . . .
>
> "There are some," he continued,
>
> who would say that [the Gablers] promoted that. 'Course, I've been unable to find any evidence of that, but it's understandable that a group like that, if you were gonna pick a county, an area to make a stand, it would probably make as much sense to pick Hawkins County as about anywhere in the country, because it's a rural, conservative Christian area. . . .
>
> Let's say any fundamentalist Christian who might have thought that Hawkins County was a good place to make a stand . . . when I say "might have thought," that could have been limited to just Vicki Frost and Jennie Wilson. Or, if you take the conspiratorial point of view, you might think that someone was behind Vicki Frost and Jennie Wilson. Whoever "they" is, I don't know. But

> what they didn't understand is . . . that people around here, while they're conservative and Christian, . . . part of being conservative is not wanting to upset the apple cart and upset tradition. And they viewed these textbooks as part of their tradition.

For a local resident, then, it would have been easy to conclude that these textbook protestors, by upsetting tradition and the local way of doing things, had, according to Reverend Patterson's analysis (supra, 38), proven themselves untrustworthy. They were therefore "outsiders" in a cultural if not a geographic sense.

The sketches which follow offer some background on these parents and their attitudes and beliefs.[21] Two observations must preface these sketches, however. First, the parents' concerns were similar to those of the religious new right--the perceived moral decline of the nation, the responsibility of humanism for this decline, the presence of humanism in the public schools, their responsibility to protect their children from humanistic influences, and their belief in their traditional right and responsibility as parents to have an influential voice in what their children were being taught. Second, they were not a close-knit group, although they did share certain characteristics--residence in the far northern section of the county, deeply held conservative religious beliefs, and children attending

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[21]Unless otherwise noted, all information in the sketches regarding place of residence, school attendance, and church membership is based on conditions during the late summer and fall of 1983.

county elementary or middle schools. As indicated by Figure 1, their homes were widely separated. Moreover, the families attended a number of different churches. As a result, when the controversy began, not all of the families were acquainted. "[W]e were not close," Mozert maintained. "We did not communicate with one another [before the controversy]. There were some families I didn't know" (Mozert Interview).[22]

Roger and Vicki Frost. Although the textbook court case was identified as Mozert v. Hawkins County Public Schools, from the inception of the controversy Vicki Frost was its leading personality and the chief spokesperson for the parents' complaints. But the position was not without its costs. She was the most widely photographed, most frequently quoted, most written-about, and also the most ridiculed and most caricatured of the participants. Jim Sharp referred to her as a "patsy." Harold Osborn called her a "parrot." And there were worse. One reader wrote to the Kingsport Times-News: "Mrs. Frost, I believe we are told it is a sin to overdo anything whether it be drinking, eating, or whatever. From what I see, maybe you should consider a vegetarian diet" ("Letters to the Editor: A Step Backward," 9 Nov. 1986, 10A). Frost recounted another

[22]Note also the comments of Vicki Frost (infra 161-62) and Sandra Couch (infra 196).

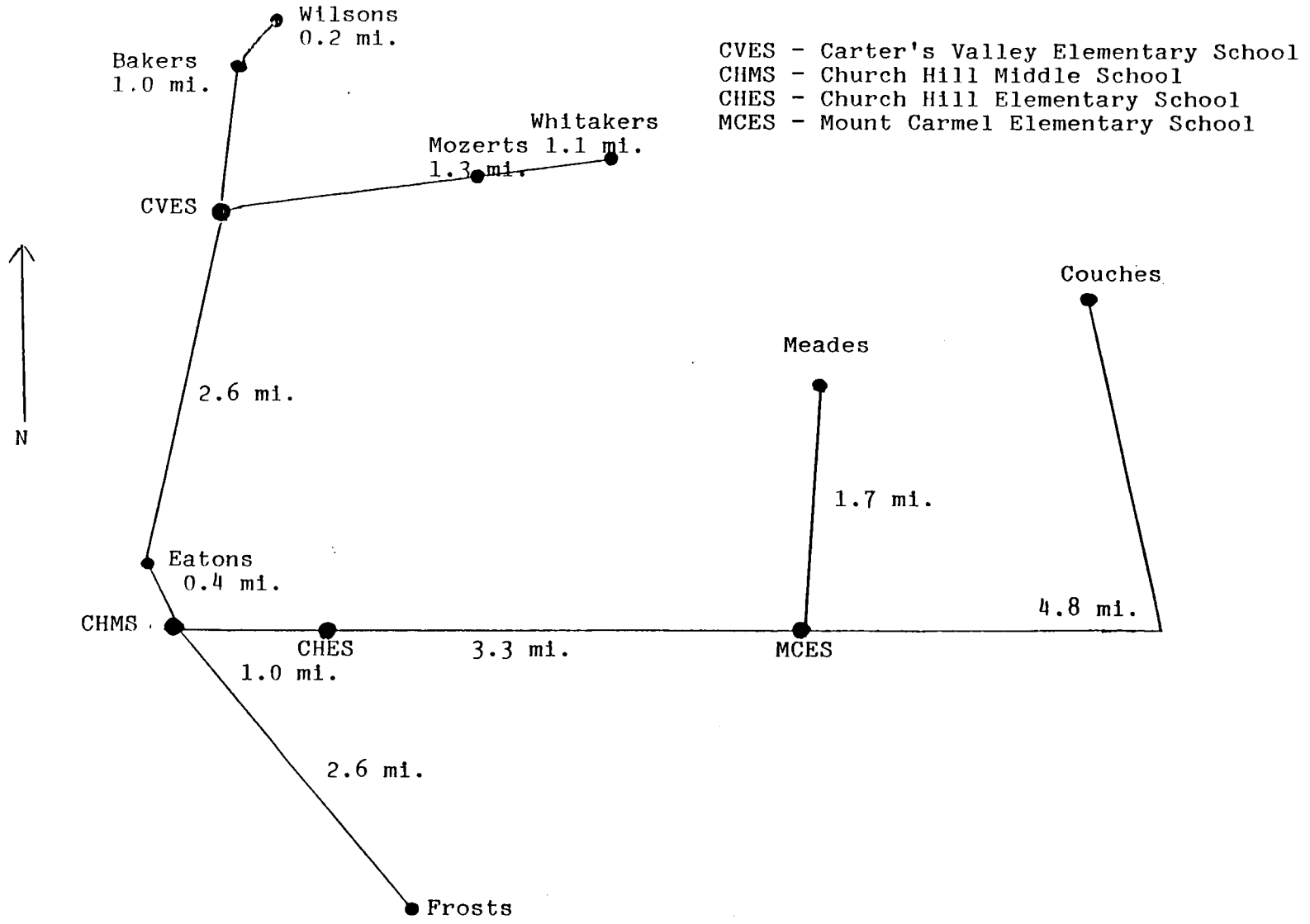



Figure 1. Family Residences and School Sites

incident during an interview reported in the Greeneville (TN) Sun:

> When Vicki Frost went grocery shopping on a recent Saturday morning, a woman approached her and asked, "Are you Vicki Frost?"
>
> When Mrs. Frost said she was, the woman "got real excited . . . she said, 'Let me go get my husband and let him see.'
>
> "She pulled him over, and she and her husband stood there and looked at me like I was on exhibit in a zoo. They just looked and grinned," Mrs. Frost said. (Cameron Judd, "Vicki Frost: A Time & Purpose." 29 Oct. 1986, 15)

Although not a Hawkins County native, Frost's roots were in East Tennessee. She had been born in neighboring Washington County and had attended schools in Sullivan County. Her husband, while strongly supportive of his wife, remained a background figure throughout the controversy. He was born in Hancock County, went to Kingsport schools, and saw combat as a Marine in Vietnam. The Frosts moved to Hawkins County in 1978 and to their present home in a rural setting near Church Hill in 1982. All of the Frost children were attending Hawkins County public schools. Marty, their only son, was in the seventh grade and oldest daughter Rebecca was in the sixth at Church Hill Middle School. The two younger daughters, Sarah and Lesha, were in the second grade and kindergarten respectively at Church Hill Elementary. Because the parents' objections centered on the second through eighth grade textbooks, Lesha was not directly involved in the conflict.

"We didn't want any problem," Frost explained.

> We didn't want any suspensions. But we wanted to stay in school. We really did. And . . . we didn't have the money to put our kids in Christian education. I told them I didn't have the money. And, you know, my husband . . . works in a plant . . . [W]e just bought a home, bought this farm, and we had a big house payment for us. And havin' four kids . . . we just didn't think we had the money. (Frost Interview)

At the time of the trial in 1986 the Frosts were attending Westminster Presbyterian Church in Kingsport, although their membership remained with a missionary Baptist church which they had joined after moving to Hawkins County. They had, in the interim, attended a number of independent, conservative, Protestant churches. But Frost identified herself simply as "born again" and a "Fundamentalist Christian" and declared her belief

> that Jesus Christ is the only means of salvation, and He is the only redeemer of mankind, and we are to . . . have empathy for those who do not believe as we do, but we cannot believe in Jesus as just one of many redeemers . . . or one of many different roads to God. (Vicki Frost Deposition 2-3 April 1986, 98; 19-20 March 1986, 44)

During an interview two years later Frost defined fundamentalism

> in terms of believin' in inerrancy of the Word, and belevin' the doctrines of the Bible. . . . If it says . . . this, then that's what it is. And if it said Jesus rose from the grave, and if He did miracles. I mean, He <u>did</u> do miracles. What I'm sayin', I believe that He did. And . . . I believe in the literal interpretation and . . . all like that.

Frost's faith was not part of a passive belief system. It required being engaged in the world. "But there are," she explained,

> . . . some fundamentalists that . . . are real separatists. . . . I'm not a separatist. . . . I believe . . . that my faith is what I'm about. It's at home. It's at church. It's at school. I mean, I live it. That's what I am. It's in the community. . . . I think that even because of my religious beliefs I have a civic obligation to see that the laws are obeyed.

She realized, however, that human intercourse involves compromise--but compromise within limits:

> And so . . . the foundation of true justice, I believe, is grounded in the Word of God, and if you stay true to that, and you try to walk justly and humbly . . . with mankind, and you do right by 'em, . . . you don't go in and try to dictate. . . . You try to work out a compromise within the framework of your . . . absolute beliefs. You know, if you have to make accommodations and you have to kinda bear that accommodation yourself, then you do it. Just don't . . . you don't compromise your convictions. (Frost Interview)

America, Frost feared, is drifting away from its relationship to God. "This Nation," she said,

> was founded upon Christian principles. I believe that our founding documents, such as the Constitution, Bill of Rights, Declaration of Independence, were Christian in nature. . . . I believe that . . . America has a Christian heritage. . . . We are slowly, or quickly, now, seeming to move away from that. (Frost Deposition 15-16 April 1986, 385-6)

Robert and Alice Mozert. The Mozerts were one possible source of local suspicion about outside interference, for, although Alice Mozert was a native of East Tennessee, her husband Robert grew up in Florida. He did attend regional

universities, however, earning a bachelor's degree in business administration from Lincoln Memorial University in nearby Harrogate, Tennessee, and a master's in economics and business from Appalachian State University in Boone, North Carolina.

The Mozerts had two children. Their son Travis was in the seventh grade at Church Hill Middle School and their daughter Sundee was a second-grade student at Carter's Valley Elementary.

On 5 January 1984, a month after the parents had filed their suit, Mozert, next to Vicki Frost the most visible of the parents, lost his job as an insurance adjustor. According to an account in the Greeneville Sun, Mozert said that his employers told him

> "today's your last day" . . . they just said "we don't need you any more." That's the only reason they gave.
>
> He had been with the firm three years, he said.
>
> But, Mozert said, "God's been faithful, and He opened this job [a position as claims manager] up to me within a month, and I got a raise and have done a lot better. I got a promotion, and my boss here, the corporate president, supports us." (Cameron Judd, "Bob Mozert: 'People Not the Enemy,'" 29 Oct. 1986, 28)

In 1980 the Mozerts began attending the Abundant Living Christian Fellowship in Kingsport, where Robert Mozert also served as principal of the church's Freedom Academy of Christian Excellence. This position, plus some time as an instructor at a business college in Kingsport, gave him

practical teaching experience. But he confessed that he had taken public education for granted. "I started going to school board meetings when this came up," he recalled.

> And I had always thought, you know, the school board . . . they are educated people. . . . They know what they're doing and they're looking out for the best interests of our kids, which are complementary to the parents' interests for their own children. Of course, I found out quite differently in attending them. (Mozert Interview)

One of the most frequent criticisms of the parents was that they were trying to mold their children, to control the way they think, to avoid exposing them to ideas and thoughts alien to their own. Mozert countered that it was the schools which were indoctrinating the children:

> Having a master's degree myself and work toward a doctorate in education, and having been an educator five years myself, I realize there are different degrees and different levels of accountability. . . . There are different levels of rationality in the mind and ability to discern through material and absorb and to make one's own mind up. . . . If this material had been in high school textbook readers . . . which they don't have readers in high school, first of all . . . but let's assume they did. . . . I probably would not have objected. I think a child . . . as they've developed, they're developed to a point where then they can discern . . . they can make their own mind up . . . they can make choices then . . . they can make their own judgments. . . . They're pretty well . . . developed into adulthood. . . . Now, what we're talking about there are readers that are from kindergarten through eighth grade. . . . [I]n the kindergarten and first grade readers we registered no objections to anything in those readers . . . in the lawsuit. Where it really starts getting pronounced is in the second grade reader. . . . [Y]ou've got children that are exposed to these same readers, a teacher, the state, and authorities out there telling them. . . . So, therefore, they're perceiving that as being an

> authority and that's the way that they should think. So, from the second grade readers all the way up through the eighth grade readers, where the childs' minds are developing, they're being developed for them . . . they're being developed because they're being impregnated with alien ideas . . . alien ideas being humanistic in nature. The religion of humanism. And humanism is a religion. (Mozert Interview)

Mozert perceived a moral decline in the nation and attributed it to the public schools. "I think, looking back at Rome, for example," he said,

> and . . . looking at the moral decline they went through, and then their ultimate fall and destruction, I think that the American people need to wake up. I think we're still a strong nation. I believe in my nation. I was officer in the military and fought for my nation in Vietnam . . . as a platoon leader. So, obviously, I believe in . . . and support the United States of America. And because of love for my country, I do have concern there and I think that the decline that we have seen is the result of . . . what kids are learning . . . what they're being taught or <u>not</u> taught. . . . Because God is completely excluded from public schools. There's no such thing as prayer in public schools any more. There's not mention of God <u>at all</u> in public schools, where there used to be. So they're not being taught a lot of things that are vital to the existence of our nation . . . of what we are founded on. There are Supreme Court decisions . . . [which] have said . . . our nation is a Christian nation. Yet they're not being taught Christianity. Or exposed to it even in public schools. . . . [T]hey don't have to teach Christianity . . . but they're not being exposed to it at all. . . . The values that are being taught are, as a matter of fact, directly opposed to Christian values and beliefs. (Mozert Interview)

When confronted with the problem of who should decide what children are to learn, he responded,

> So when I see that my children are being indoctrinated or impregnated with a philosophy that's designed to supplant their Christian

> beliefs and morals, then, yeah, then I have a problem with it. . . . I'll stand up against it very firmly, and I will not give. Because I recognize my right as a parent to preserve . . . our Christian heritage to my children. (Mozert Interview)

Mozert believed the Scriptures are the inerrant word of God and he accepted them literally "when they can be taken literally. . . . There are occasions when the Scripture speaks of something in a figurative manner, too" (Mozert Interview).

When asked about the label "fundamentalist" which had been applied to the parents, Mozert replied,

> I laugh at that definition because Ayatollah Khomeini [was] a fundamentalist, you know. . . . And he killed Christians. There is no such thing as a fundamentalist Christian, first of all. Now the Bible says that in Antioch they were first called Christians. The reason they were called Christians was because they acted Christ-like. Now Christians, according to the Scripture, [have] been spiritually born again, and because they are alive unto God and their spirit is alive, then they are obedient to the Scriptures, they begin to grow in wisdom and knowledge of the Scriptures and line their life up according to it. Now the life they line up, of course, is according to the life that Jesus Christ himself led. That the goal. . . . Not that we always do it. (Mozert Interview)

According to Mozert, there are two kinds of people in the world, Christians and sinners. "So, if you're not a Christian," he reasoned,

> you're a sinner. I mean you're either saved or you're a sinner. And I don't criticize a sinner. I never do. We're not called to. We're not supposed to judge a sinner because I was once one myself. . . . But having been there, and now being converted or born again, then I understand, of course, a Christian perspective now. (Mozert Interview)

Like Frost, Mozert believed a Christian must live his faith. "So, then," he added,

> that's my goal, is to operate according to that. Now, that's the Christian . . . one who acts like a Christian . . . not just says, "I'm a Christian." Just because someone says they're a Christian doesn't mean they are. The Scripture says that you'll know them by their fruits. So that you look at the fruits of someone's life. (Mozert Interview)

Mozert viewed his role in life as one of serving others. "In my business," he explained,

> I'm a servant. I'm here now to serve people. I provide a service, and that service must be satisfactory. I have standards that I set in serving people to make sure their claim's taken care of, that they get a fair and equitable settlement, and within a reasonable period of time. . . . I'm actively involved in the church, too, and am the principal of the school there. . . . At whatever level that I find myself in . . . that still does not change the fact that I'm a servant. And that's what my role is, that's what I should do. (Mozert Interview)

James F. and Rachel Baker. For at least two reasons the Bakers fueled the conspiracy theory. First, they moved to Church Hill from Bristol, Tennessee, and enrolled their daughters in Carter's Valley Elementary School on 3 October 1983, approximately one month after the controversy had begun. They did this with full knowledge of the nature of the objections which had been raised to the Holt books and with the understanding that their children would probably be using the books.[23] Second, Rachel Baker's parents, Marion

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[23]It was in Bristol where, just a short time before, Suzanne Clark had had her trouble with NEA and where, just across the state line in Bristol, Virginia, a public school

and Jennie Wilson, were at this point quite active in the controversy and were suspected of possibly being in league with the Gablers, the influential, religiously conservative Texas couple who for several years prior to the controversy had reviewed and rated public school textbooks. According to Harold Osborn,

> Mrs. Wilson came here from Longview, Texas. . . . That's what I've been told time and time again. Or thereabouts. Her husband was in the service and 'course they were stationed around, and I understand that's where they were at and came back here.

Vicki Frost rejected this allegation, however, explaining that Marion Wilson had retired from military service in 1974 and they had moved to Hawkins County at that time; that his last duty station had been near El Paso, across the state from Longview, the center of the Gablers' operation; and that Jennie Wilson "didn't even become a Christian until she moved up here" (Frost Interview). Nonetheless, Harold Osborn asserted that "Jennie Wilson, . . . as far as I'm concerned and can determine, was the real instigator of the whole thing."

The Baker girls, Heather and Vicky, were Rachel Baker's daughters by a previous marriage (James Baker Deposition, 33). Heather entered the second grade and Vicky the first

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Bible study course had been the subject of a federal court trial (supra 82n, 66). These events may have prompted Jim Sharp, as he was complaining about "outsiders" who "initiated the whole thing," to state, "I'm talking about whomever got to the Bakers, that sent 'em in here from Bristol."

at Carter's Valley Elementary School. Both girls were withdrawn two weeks later and were enrolled in a private Christian school (Rachel Baker Deposition, 75).

Rachel Baker had been born in Germany. Her husband, a Sullivan County native, had been employed in Kingsport since 1974. The Bakers attended Westminister Presbyterian Church in Kingsport for approximately one year prior to the trial (Amended Joint Stipulation, 5).

John and Sandra Couch. Sandra Couch was a native Hawkins Countian while her husband John was born in neighboring Sullivan County. Both graduated from high school in Hawkins County, and John later found employment in nearby Kingsport. They had five children, four of whom were in local public schools. David a freshman at Volunteer High School, was not using the Holt books but was removed from school the following year and taught at home because of "perceived negative attitudes" on the part of the school board members and school supporters (Sandra Couch Deposition, 28). Billy was a seventh-grade student at Church Hill Middle School and Sam and Wayne were in the third and first grade respectively at Mount Carmel Elementary School.

Sandra Couch related an exchange she had with the principal at Church Hill Middle School when she asked if her son Billy could be taken out of reading class and given an alternative reader:

> Well, I only remember bits and pieces of the conversation, but he asked me why we objected to the book, and I mentioned a couple of selections to him and why we objected to them. I do recall that . . . he said something like, "You're aware that I could give him a zero in reading," and I said, "Well, I guess you could." And I said, "We still have to do what we believe is right. I want my children to grow up understanding what's right is worth standing for even if it costs you something. You do what you have to do, and we'll do what we have to do. . . ." (Sandra Couch Deposition, 129-130)

The Couches attended Abundant Living Christian Fellowship.

Jimmy D. and Virginia Sue Eaton. Jimmy D. Eaton was a native and nearly lifelong resident of Hawkins County. He attended local schools and later earned an associate degree in industrial management from Steed College in Kingsport. He was employed in Hawkins County. Sue Eaton had been born and attended school in Kentucky but moved to Hawkins County in 1969. Jimmy Eaton's parents had worked for many years for the schools in Church Hill, his father as a custodian and his mother as a cook (telephone interview with Sue Eaton, 29 July 1989). The Eatons had been living in Church Hill when the controversy began but later moved to nearby Surgoinsville. Their oldest child Brad was in the sixth grade in Church Hill Middle School and their daughter Rebecca was in a private Christian school kindergarten.

As a youth Jimmy Eaton had belonged to the United Methodist Church, but after their marriage, they worshipped at a number of Baptist churches. At the time of the

controversy they were attending Liberty Baptist Independent Church. Eaton revealed that he tried "to study the Bible every day" and identified himself as a fundamentalist, which he defined as "you have to believe the Bible, believe what it says, front to end. You can't just pick out certain parts. You've got to believe the whole thing" (Jimmy D. Eaton Deposition, 19-23, 18, 71-72).

When asked why he didn't try to have the books removed from school if he felt they were so objectionable, Eaton replied,

> I don't know why we . . . didn't bring that up. The only thing we . . . wanted was just an alternative reader for our child to read. That wasn't--as far as removal of the books from school, that was never really talked about. I mean at the meetings I attended.

Eaton also stated that, even if the parents ultimately won the lawsuit, he and his wife intended to keep their children in Christian school

> because it's a better education, you know. They just learn so much more. In the public schools, why he was making failing grades, and in Christian school he's making A's, almost a straight A student. (Jimmy D. Eaton Deposition, 100-101, 36-37)

In 1986 Eaton ran for election to the Hawkins County School Board from his local district. "And he ran as a Democrat in a Republican county," Clay Bowers observed,

> which is kind of interesting. Usually your conservative Christians are very pro-Republican and very pro-Ronald Reagan. . . . But he ran as a Democrat and . . . he didn't get the Democrats for it. He didn't get any support or not much at all. He got two hundred and some votes . . . not many,

if that many. May not have even been over a hundred. It was a very poor showing.

James F. and Christine Meade. The Meades had moved to Hawkins County from Virginia more than a decade before the controversy arose. They lived in Church Hill although he was employed in Kingsport. Their daughter Angela was a seventh grade student at Church Hill Middle School and their son James was in fifth grade at Carter's Valley Elementary. Because the Meades were latecomers to the controversy, their experiences during the first few months differed slightly from those of the other families. Unlike the other plaintiff children at the middle school, Angela continued to use the Holt textbook. As a result, she did not suffer the suspensions of her fellow students. Moreover, the Meades kept their children in Hawkins County schools throughout the 1983-84 school year, but early in the following year both Angela and James transferred to a private Christian school. During her deposition Christine Meade was asked why the followed this procedure:

A: We became aware of what was being taught and we felt like that we taught them one thing at home and then the school taught them another thing. And we began to feel like that we were sending them into enemy territory.

Q: Was this concern of yours a larger concern than just the readers that they were exposed to? Was this about how they were being taught in general in the public schools?

A: No, it was just these readers. (Christine Meade Deposition, 87)

Additionally, although the Meades attended a meeting or two during the autumn of 1983 while the controversy was developing, they became plaintiffs in the lawsuit through direct contact with Concerned Women for America in Washington, DC, rather than as a result of concerted action with the other families (Christine Meade Deposition, 35).

At the time of the controversy the family belonged to Carter's Valley Missionary Baptist Church but changed about a year later to Faith Baptist Church in Church Hill because "we weren't satisfied down there." Mrs. Meade stated that she believed that theirs was "the only true religion" (Christine Meade Deposition, 7, 41).

Ernest and Janet Whitaker. Ernest Whitaker had been born in Church Hill and graduated from Church Hill High School. His wife Janet had moved with her family from Virginia to Kingsport, where she later graduated from high school. At the time the controversy arose, she had been a resident of Hawkins County for seventeen years (telephone interview with Janet Whitaker, 29 July 1989). The Whitakers' son Steve was in the seventh grade at Church Hill Middle School. In December 1983, when the county withdrew the suspensions that had been imposed on some of the students, Steve reentered public school rather than enroll with many of the other plaintiff children in private Christian school. His mother explained,

> Well, at that time, we couldn't afford it, and [I'd] been having a lot of problems with my back,

> and I knew there would be a lot of mornings I wouldn't be able to drive him to school. So we had no alternative but to keep him in the Hawkins County school system. (Transcript of Proceedings, Mozert v. Hawkins County Public Schools, 17 July 1986, 927. Hereinafter referred to as Mozert Record of Trial.)

The Whitakers had attended the Central Assembly of God Church in Kingsport since 1973.

The Parents' Complaints

In addition to their lack of organization, the parents did not enter the controversy with a well-defined agenda. Their objections began with one textbook and developed over the following weeks and months to include the nine teacher's editions from grade 2 through 8. Even when they met for two days in December 1983 to draw up an affidavit listing their complaints as a part of their court action, the had differing opinions. During his deposition Mozert was questioned on this meeting:

> Q: . . . were there differences among the plaintiffs as to what parts of these things were objectionable and what parts weren't?
>
> A: In varying degrees, yes.
>
> Q: Why did such differences of opinion occur?
>
> A: Some of them--well, mostly on the part I suppose, of one that is not a plaintiff of the lawsuit, Jennie Wilson. She had certain objections to them that we seemed to think weren't strong objections. We would not object to some of the same things to which she objected to. Those things were eliminated. We wanted to be careful not to nit-pick over the books, trying to take certain individual quotes out of context. . . . (119)

Nor did they necessarily intend from the beginning to make a court fight out of the issue. "I don't think they planned for this thing to go to the Supreme Court," Clay Bowers said.

> They were just going to fight a little battle here in Hawkins County, saying, "these textbooks really offend us." And I think it's an honest feeling. . . . And so . . . their feelings were strong about the textbooks. . . . And I think . . . that they wanted to do something <u>just at their school</u>, or maybe in the school system. . . . And they thought they could make a change, a small change albeit, never knowing it would go to this, all the way to the Supreme Court. So I don't think they ever believed a mandate to go to the Supreme Court through the court system. They just believed that their mandate was to do what they thought was right.

Vicki Frost concurred: "There's no way possible that the parents could have even went to court had it not been for the Lord supplyin' the financial resources" (Frost Interview)

In mature form the parents' objections were to sixteen themes (Table 2) which they detected in Holt's second- through eighth-grade readers. They believed these themes shared three characteristics: they violated their personal religious beliefs; they contained elements of secular humanism; and they reflected problems which they perceived in the larger society--the breakdown of the family, the loss of external authority (i.e., Judeo-Christian moral absolutes), the promotion of human autonomy, the denial of the primacy of Christ and the significance of Christ's

TABLE 2

Parental Objections to Holt Basic Reading Series

| | Court Exhibit No. | Theme | Total No. of Objections | Grades of Books to which Applicable |
|---|---|---|---|---|
| 1. | 22 | Futuristic Supernaturalism-Man as God | 7 | 6,7,8 |
| 2. | 23 | Evolution | 24 | 2,3,4,5,6,7,8 |
| 3. | 24 | Animals Are Equal to Humans | 26 | 2,5,6,7,8 |
| 4. | 25 | Specific Humanistic Themes | 27 | 2,3,4,5,6,7,8 |
| 5. | 27 | One World Government | 21 | 2,4,5,6,7,8 |
| 6. | 28 | Godless Supernaturalism | 33 | 2,3,4,5,6,7,8 |
| 7. | 29 | The Skeptics View of Religion: Contrasting Belief in the Supernatural with Science | 14 | 5,6 |
| 8. | 30 | Situation Ethics/Values Clarification | 36 | 2,3,4,5,6,7,8 |
| 9. | 31 | Humanistic Moral Absolutes | 6 | 2,3,4,7 |
| 10. | 32 | Magic | 36 | 2,3,4,5,6,7,8 |
| 11. | 33 | False Views of Death and Related Themes | 10 | 4,6,7,8 |
| 12. | 34 | Other Religions | 47 | 2,4,5,6,7,8 |
| 13. | 35 | Skeptics View of Religion | 23 | 3,4,5,6,7,8 |
| 14. | 36 | Pacifism | 27 | 2,3,5,6,7,8 |
| 15. | 37 | Role Reversal - Role Elimination | 87 | 2,3,4,5,6,7,8 |
| 16. | 38 | Rebellion Against Parents/ Self - Authority | 31 | 2,3,4,5,6,7,8 |

Source: Joint Stipulation Regarding Exhibits
Mozert v. Hawkins County Public Schools
No. CIV-2-83-401

mission, and an advocacy of one-world government. Throughout the books the parents identified stories, poems, and articles which contributed to one or more of these themes. They also argued that certain features of the teacher's editions--the discussion questions, the role playing, and the written exercises--plus the authoritarian environment of the classroom, served to reinforce the themes in the children's minds, particularly children at such a formative stage of development.

People might say, Vicki Frost explained,

> "Well, that's just . . . mere exposure. You're just exposin' the child to that." If you just . . . look up the definition of that word, "mere exposure" means nothin' more or less than just put somethin' out to view. When a child reads, he practices critical reading, that is part of his reading skill acquisition; he does literal reading, you know, for the literal meaning of what's bein' said. . . . Then he looks for inferred meanings. And there's all kind of analysis goin' on about what he's reading. And in the context. . . . It's not for the child to sit in a little room by himself and all of a sudden pick somethin' up and lay it down. It's critical analysis of what he's readin', and then he's got a teacher up there. Then there's students that are addin' to the comments. There are questions. There are papers to write upon what you read. . . . For a whole hour that day you have a . . . jamming of all those . . . exercises, comments, discussions. It's not just mere reading. . . . And this is somethin' that . . . you're purposely gonna do every day for a hundred and seventy-five days for . . . eight years or whatever. (Frost Interview)

Frost was particularly concerned about the relativism she detected in the books. According to her, the Holt method of developing a child's analytical and interpretive

powers was by "leadin' the child to base every one of his decisions . . . upon 'How do you feel?" Such an approach, she believed, "totally alienates him from a set of beliefs," and causes him to make situationally based value judgments. "[I]f he's geared to act upon 'How do you feel?'," she contended,

> then his actions are gonna be arbitrary, unstable, and non-absolute, because he may feel different one way from another. . . . It's like a situation of tellin' the truth. . . . You felt compassion this time. And you felt loyalty, so you lied. And then another time, when you felt this or you felt that, and it becomes wishy-washy. But if you do somethin', not based upon how you feel but because you have a set standard, an absolute, and . . . because the Bible warns about a man bein' led around by what he thinks in his heart rather than by a firm foundation, 'cause . . . his emotions will lead him every way. . . . Education is based totally on feeling. And that's . . . a whole philosophy that's different from education that's comin' from a solid base. (Frost Interview)

The process for Frost and the other parents was educational as well as critical. They learned as they went along. Frost said that she spent "much more" than two hundred hours reviewing the Holt books (Telephone conversation between Vicki Frost and the author, 28 August 1989). Her description of her method of review illustrates this process of development and growth:

> But when I started out lookin' at these books, I'd read things and I'd read and I'd think, "There's somethin' that just is not right about this, but I don't know what it is yet." And I'd read and read and read and read. And I'd read, and then I'd begin to pick up, "This is a pattern. I've read this here and I've read that there, and it's a pattern all the way through." And then I went back and I put 'em all together. But, the first

> time to sit down readin' one book, you know, some things were blatant and then some things were . . . I couldn't discern quite, but I knew there was somethin' that's just not hittin' right here. And then when I picked up on another book, it became more clear. Because, I mean, that's why I believe a lot of parents, they looked at one book and they'd say, "Well, you know, this is just stuff like I read. I don't really see anything wrong with it. . . . You know, that bad." But when you pick up on the whole thing's. . . . (Frost Interview)

In citing the presence of these themes, the parents raised another objection, the lack of any countervailing point of view. Bob Mozert said that he could

> see the content of the curriculum in the public schools eroding away at those [institutions of family and church]. . . . For example, these Holt, Rinehart, Winston readers, where it never presents the traditional family role one time in any story. It never presents anything about church. It presents twelve different religions, and of those twelve different religions--world religions--that are presented in these texts, there's not one presentation of [Protestant] Christianity in them. Not one Christian story. But there's a story about all of these other religions.[24] (Mozert Interview)

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[24]By bringing up these concerns about relativism and the presence of a number of religions in the books, Frost and Mozert were raising another issue--the reality of religious truth. The dilemma, according to sociologist Robert Bellah, is

> that however much we would want to criticize the policy of religious uniformity and establishment, we nonetheless have to grapple with the arguments used to defend them. Indeed, if we look at religious pluralism and religious freedom in the light of those arguments we may come to some disturbing conclusions. If there is no religious truth that is publicly recognized we might conclude that there is no religious truth at all, or at least that the only truth of religion is private, individual, or might we say, psychological truth, but no truth with any public consequences. Or we might even say that religious pluralism implies that religion, in any public meaning of

Vicki Frost had a similar complaint with regard to the portrayal of sexual roles:

> . . . I see . . . the terrible dominance of role elimination and pro-feminism without any balance for traditional. I mean, every fairy tale was turned into a modern-day women's liberation movement in the story. And there was not one traditional fairy tale where they had the princess bein' rescued. But they made a point in the teacher's manuals to say . . . "We're bringin' you a modern-day fairy tale. And we're gonna contrast it in the teacher's manual to the old traditional one." And the old traditional fairy tale makes the princess look like she's frail and weak. But the modern-day princess is strong, not particularly pretty. She's clever. And she always saves the king or the kingdom or kills the dragon. And . . . you just think, "well, what's a fairy tale?" But it's what's behind . . . the moral or the lesson taught. And when you have that constantly fed, that at the end of seven years,. . . when you hear they have to write about "What do you think about the ERA?". . . And when you've been given just one point of the issue, how will they respond? You know, that's the concern. . . the greatest concern's there's no balance. No balance whatsoever.[25] (Frost Interview)

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> the term, is untrue. Similarly, religious freedom means that each individual can choose his or her religion and follow the moral values and commitments that religion entails, however radically incompatible with the moral values and commitments of others. So religious pluralism and religious freedom seem to imply a society in which there is no public truth about ultimate things and in which there is no shared morality.
>
> One might ask the question, though, whether religious freedom and pluralism so understood do not, covertly at least, amount to a new establishment and a new system of common values. The new truth is that there is no religious truth. (Bellah, 1982:34)

[25]The parents were not alone in their criticisms. Members of the academic community raised similar objections. Although the two groups would disagree on the breadth of the base for moral absolutes, there is not much distance between Frost's anxiety about the values taught in the public schools and the concerns registered by Allan Bloom in The Closing of

When the controversy came to trial in federal district court in 1986, the parents successfully argued their concern not only for the presence of the themes in the texts but

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the American Mind (1987). For example, Bloom argues,

> The courses in "value clarification" springing up in the schools are supposed to provide models for parents and get children to talk about abortion, sexism or the arms race, issues the significance of which they cannot possibly understand. Such education is little more than propaganda that does not work, because the opinions or values arrived at are will-o'-the-wisps, insubstantial, without ground in experience or passion, which are the bases or moral reasoning. Such "values" will inevitably change as public opinion changes. The new moral education has none of the genius that engenders moral instinct or second nature, the prerequisite not only of character but also of thought. (61)

Additionally, Paul C. Vitz, a psychology professor from New York University, conducted a study of values in public school textbooks and later testified for the parents in the trial. Among the books Vitz examined were third and sixth grade texts from eleven sets of basal readers, including the 1983 Holt series. The study concluded:

> When one looks at the total sample of 670 pieces in these basal readers the following findings stand out. Serious religious motivation is featured nowhere. References to Christianity or Judaism are uncommon and typically superficial. In particular, Protestantism is almost entirely excluded, at least for whites. Patriotism is close to nonexistent in the sample. Likewise, any appreciation of business success is essentially unrepresented. Traditional roles for both men and women receive virtually no support, while feminist portrayals regularly show women engaged in activities indistinguishable from those of men. Indeed, clear attacks on traditional sex roles, especially traditional concepts of manhood, were common.
>
> The above characteristics taken together make it clear that these basal readers are so written as to represent a systematic denial of the history, heritage, beliefs, and values of a very large segment of the American people. (Paul C. Vitz, "Religion and Traditional Values in Public School Textbooks: An Empirical Study," 70-71. Exhibit No. 46, Mozert Trial Files.)

also for the lack of balance in their presentation. The presiding judge, Thomas G. Hull, wrote,

> The representative plaintiff-parents clearly testified that the material objected to was offensive "in the context of the Holt series." The plaintiffs perceive certain objectionable themes running throughout the Holt series. For example, the Holt series contains a definite feminist theme, and the plaintiffs have a religious objection to stories which appear to denigrate the differences between the sexes.
>
> It appears to the Court that many of the objectionable passages in the Holt books would be rendered inoffensive, or less offensive, in a more balanced context. The problem with the Holt series, as it relates to the plaintiffs' beliefs, is one of degree. One story reinforces and builds upon the others throughout the individual texts and the series as a whole. The plaintiffs believe that, after reading the entire Holt series, a child might adopt the views of a feminist, a humanist, a pacifist, an anti-Christian, a vegetarian, or an advocate of a "one-world government."
>
> Plaintiffs sincerely believe that the repetitive affirmation of these philosophical viewpoints is repulsive to the Christian faith--so repulsive that they must not allow their children to be exposed to the Holt series. This is their religious belief. They have drawn a line, "and it is not for us to say that the line [they] drew was an unreasonable one." (Mozert v. Hawkins County Public Schools, 647 F.Supp. 1199 1986)

The Goldilocks problem. In the court of public opinion the parents never enjoyed the success they had with Judge Hull. In order to illustrate their objections, they had to offer individual selections which they considered representative of each theme. The difficulty here was one of articulation and understanding. The big picture became lost in the examination of each brush stroke. By giving

specific examples, the parents provided their opponents with opportunities to separate each objection from its thematic context and the families from the remainder of the community. Once these criticisms were separated from their themes, they became targets for scorn and derision. Similarly, if the objections could be represented as frivolous and ridiculous, then it would be relatively easy to portray the parents as extremists whose views lay outside the county's cultural norms.

Rev. William Patterson, who supported the parents' position, felt that they

> were not sophisticated in the areas of argument. . . . And . . . [their case] was not articulated as well as it should have been. Because, first of all, if you start one of these kind of fights, you have got to be very careful you don't step in the manure. And that's what you've got to avoid first. And the very first time you get a little manure on your shoes, that's where the press zeroes in, and that's what sets public opinion. . . . And I think they did that right off the bat. . . . You know, the public immediately wants to zero in on something. And once they zero in, you couldn't blast it out with dynamite. And that becomes the set opinion. That, to me, was the whole ball game there as far as setting public opinion.

The "manure" resulted from a letter over Bob Mozert's signature complaining about stories involving the three little pigs and Goldilocks. The letter, which was printed in two local newspapers, read in part:

> The Holt, Rinehart, Winston reading series used in Hawkins County schools have the Secular Humanism religion taught throughout. . . . To show parents how this doctrine is preached to the Hawkins County school children so cleverly and

unobtrusively, this week we will review one of the first grade readers.

Rhymes and Tales, New York, NY, Holt, Rinehart, Winston, 1983, 1980, Paperback. . . .

On pages 48 and 49, in the story of the three pigs, there is punishment meted out but no crime was perpetrated. The wolf only "saw" the pigs just as they "saw" the wolf; however, the last page of that story shows the wolf in the fire while the three pigs dance gleefully about.

To frustrate and confuse the first grader, thereby "preaching" Secular Humanism to impressionable minds the story of Goldilocks on page 63 carries no punishment for the crime. Goldilocks trespassed, showed no respect for the property of others and did most of the things she did in the traditional story; howbeit, in the Holt series, she does not pay for her crime by being scared out of her wits. Instead, after being discovered in the little bear's bed, the story ends with a good-by to the bears and they in turn say good-by to her. ("Letters to the Editor," Rogersville Review, 6 Oct. 1983, A-2; "Letters to the Editor," Kingsport Times-News, 18 Oct. 1983, 6A)

In retrospect, the letter revealed more about the parents' initial lack of cohesiveness and their early failure to develop a consensual strategy than it offered an insight into their attitude toward the textbooks.[26] Three

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[26]As a result of publication of the Goldilocks letter the fundamentalist families became the target of considerable public ridicule (infra 138-41). There were others, however, who found similar objections to the values conveyed by fairy and folk tales. For example, five years after Mozert's letter appeared, an article in Newsweek addressed the same problem:

> The current edition of "Books in Print" lists 29 editions of "Three Little Pigs," 30 of "Little Red Riding Hood" and 19 of "Sleeping Beauty." . . . While some of these books are beautifully illustrated renditions that are well written and faithful to the traditional story, others are just

years later, an article in the Greeneville Sun, based on an interview with Mozert, explained more about the letter's origin and the problem it created for the parents:

> He [Mozert] does not care for the way the media have, for the most part, portrayed the Hawkins County case.
>
> "People do have a right to know--to know the truth--but much of the media have distorted the truth, such as ABC, who presented a lie, an outright lie."
>
> The "lie" he said, was that the plaintiffs were protesting stories in a first-grade reader such as "Goldilocks" and "The Three Little Pigs."
>
> "I told them (ABC) no, that was absurd, and the media had tried to pin that on us. And I told them exactly how that happened," Mozert said.
>
> How it happened is a story in itself, one that illustrates differences of personality and sensitivity levels among those opposing the textbooks.
>
> Jennie Wilson, the mother of one of the plaintiffs and a strong background supporter of the COBS [Citizens Organized for Better Schools--an organization the parents formed and later disbanded] effort, had written "two or three" letters to the editor of The Kingsport Times-News in protest of the Holt, Rinehart and Winston

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plain junk. . . .

. . . But taking out all the scary or sad parts strips the tale of its age-old purpose--to impart values while entertaining. Consider one current edition of "Goldilocks and the Three Bears." It ends with the surprising news that the bears forgive the blond intruder and everyone becomes friends. That probably won't incite a kid to go on to a career of breaking and entering but it can leave kids with the impression that something will always happen in the nick of time to save them from the consequences of their actions. (Barbara Kantrowitz, "Fractured Fairy Tales," Newsweek, 18 July 1988, 64).

reading series which is at the heart of the dispute.

One of Mrs. Wilson's letters, Mozert said, protested changes in a first-grade Holt reader in traditional stories such as "Little Red Riding Hood" and "The Three Little Pigs."

In his view, any objectionable themes in the first-grade reader were too subtle to be significant, and the plaintiffs never lodged any complaints in court against that particular reader, he said.

But Jennie Wilson, a woman "of great zeal," in Mozert's description, did object to some of the first-grade reader's contents, and wrote a letter to the Times-News outlining those objections.

Before doing so, she called Mozert and read the letter to him, asking him if he saw anything wrong with it.

Though he did not share Mrs. Wilson's concern about the first-grade book in particular, he "didn't see anything wrong with it (the letter)," and told her so.

So, Mozert said, "she signed my name to it, and I didn't know that." The letter ran over his signature.

"Jennie had written about two or three and had them printed, and she wanted that one printed. She was afraid they might not print that one if it had her signature on it," Mozert said.

"When I told her (Mrs. Wilson) that, no, I didn't see anything wrong with the letter, what I was listening for was whether she was coming against anybody in a position of authority," something Mozert believes is un-Christian.

The letter did not attack any authorities, in Mozert's view, so he told Mrs. Wilson he felt it was acceptable, not knowing it would be published above his name.

Mozert chuckles about the incident now.

But he does not appreciate the fact that, after explaining in an interview with ABC news how the

> letter wrongly came to have his signature, the network chose, he said, to run only one statement from the interview: Mozert saying the content of the readers does offend the plaintiffs' religious convictions.
>
> Contrary to Mozert's unbroadcasted statements, he said, Mozert's comment was followed in the ABC broadcast with a commentator's statement that the plaintiffs were protesting "The Three Little Pigs" because it promoted "witchcraft."
>
> "That's a lie--that's totally untrue," Mozert said. "Now, Jennie Wilson probably feels that way, and she's a sister in Christ, she's born again. That's just the way she feels."
>
> "I disagree with her. But I can laugh about it. I still love her, and I can fellowship with her."[27] (Cameron Judd, "Bob Mozert: 'People Not the Enemy,'" Greeneville Sun, 29 Oct. 1986, 28)

Jennie Wilson later confirmed that she was the author of the letter but added that "Bob Mozert gave me permission to use his name." She explained that she had done this in order to circumvent a local paper's policy which limited the number of published letters from a single individual within a specific time period. She wanted, she said, to ensure that this particular letter would be printed (telephone interview with Jennie Wilson, 3 July 1989).

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[27]In a parenthetical comment the article added that the newspaper had

> contacted the ABC reporter who conducted the interview to which Mozert referred. The reporter said there apparently was confusion on his part about the matter discussed. His impression at the time of the interview was, he said, that the reference was to a letter other than the one in which the "Three Little Pigs" story was cited. "I didn't know there was anything bogus about the letter," he said. (Cameron Judd, "Bob Mozert . . .," 28)

Thus, while the source of the letter is clear, Mozert's contribution to its publication remains clouded. If he did agree initially with Jennie Wilson, less than two months later he was quoted by the Kingsport Times-News as stating that he was afraid the Goldilocks letter "could be 'used to discredit' COBS' arguments" (David Brooks, "Textbook Dispute Balloons," 2 Dec. 1983, 2A). But two more significant observations should be made here. First, if the parents--or some of them--had voiced complaints about such stories as "Goldilocks" and "The Three Little Pigs," they had retreated from this position by the time they identified and arranged their objections according to the sixteen themes which became part of the litigation proceedings. And second, Mozert's fears that these complaints "could be 'used to discredit'" the parents' case had already become a reality. School officials had begun attacking the letter and attempting to associate it in the public mind with extremist opposition to time-honored, traditional fairy tales.

School and Community Reaction

The first school response came from the principal of Carter's Valley Elementary School, where two of the plaintiff children were enrolled. In a letter to the Kingsport Times-News Archie McMillan not only belittled the parents and their objections but also linked their complaints to the highly charged issue of censorship:

> Secular humanism. Nihilistic fantasy. Thought control. Distorted realism. Things That Go Bump In The Night. Ideas to strike fear in the hearts of parents. Ideas which "COBS" can strangely connect with such Satan-oriented stories as "The Three Little Pigs" and "Goldilocks."
>
> Who are the "COBS"? A small but vocal group who have, by self-appointment, become the protectors of the children of Hawkins County. How will they do this? Textbooks' censorship. . . . ("Letters to the Editor: Group's Wrong," 23 Oct. 1983, 10A)

A short time later the county school superintendent derided the Goldilocks complaints, adding a "we-they" twist to his comments:

> "Many people have expressed anger that these people are tearing up a good school system with their narrow thinking," said Hawkins County School Superintendent Bill Snodgrass.
>
> "I think they are too far right of center for Hawkins County people," he said. "Most of the people here are moderate conservatives. I don't think you're going to turn Hawkins County folks against the three pigs and the three bears. . . ." (Beth McLeod, "Are These Textbooks Wrong?" Johnson City (TN) Press Chronicle, 27 Nov. 1983, 41)

This effort to discredit the parents was not limited to "Goldilocks" and "The Three Little Pigs." As the controversy developed, school officials attacked the families' complaints against a number of other selections. Among these were textbook adaptations of The Diary of Anne Frank and The Wizard of Oz and some selections which, like "Goldilocks" and "The Three Little Pigs," were not among the pieces listed in the plaintiff exhibits (Exhibits 22-25 and 27-38, Mozert Trial Files). But the "Goldilocks letter" provided Hawkins County school officials at a very early

point in the controversy with an opportunity to shape public attitudes toward the parents' complaints by adjusting the focus downward from the larger themes which the parents contended ran through the Holt series to objections about individual selections. The result was to portray the parents as extremists and outsiders not sharing local culture norms.

By the time the case came to trial in federal district court in the summer and fall of 1986, there were signs that the school system was succeeding in its efforts. People for the American Way's president wrote,

> The news media have emphasized some of the unusual views volunteered by the Hawkins County ultra-fundamentalists. For instance, the ultra-fundamentalists suggest that The Wizard of Oz, the story of King Arthur, Cinderella, Jack and Jill, and The Three Little Pigs are all anti-Christian. (Anthony T. Podesta, "Public Education on Trial," Forum, Fall 1986, 2)

In addition to broadcast media references such as that by ABC to the Goldilocks complaint, a USA Today editorial began:

> Goldilocks is on trial in Greeneville, Tenn. So are the three little pigs, Jack and Jill, and a little boy who cooks. . . .
>
> What have they got against Goldilocks? Well, she didn't go to the slammer for breaking and entering. What's wrong with The Three Little Pigs? Well, dancing around a kettle promotes witchcraft. And the jollity of Jack and Jill suggests satanism, and the lad who cooks advances feminism.
>
> That's so ridiculous it's hard to take seriously. . . . ("Intolerant Zealots Threaten Our Schools," 23 July 1986, 8A)

Alongside the editorial was a David Seavey cartoon depicting a wild-eyed man, bearing a torch in one hand and a noose in the other, chasing a frightened Goldilocks and three little pigs past the Church Hill city limits.

On the local scene the school system's tactics were equally successful. Lester Sills, who confessed that "I never read one of 'em [the Holt textbooks]," observed,

> They [the parents] had some of those little old things . . . Jack and Jill. . . . Now, most people thought that was ridiculous when they started bringin' stuff like that into it . . . and I did too. . . . I mean, we growed up with that. . . . [W]e come through school as Bible-believin' people--paid no attention or noticed it. And they were lookin' seemed like for ever'thing they could find . . . anything. . . . And I know the sympathy in the church was . . . most of the sympathy was mostly ag'in 'em. . . . [L]ike you could tell that if you had took a poll at the Baptist church where I go to, they didn't have a lot of support. I don't think they had much support--and in the public around here.

As part of their effort to discredit the parents' objections, school officials denied that the textbooks contained any basis for complaint. School board chairman Harold Silvers was among the first to express this view. According to the Kingsport Times-News, he stated that "he had read one of the texts in question and said, 'I couldn't find any of these alleged things in there. To me, it was a good book . . . it would increase a child's mind'" (David Brooks, "School Board Member Takes COBS to Task," 11 Nov. 1983, 8A). Six days later the Greeneville Sun reported,

> School board Chairman Harold Silvers said Wednesday that after listening to the parents'

arguments, "I'm not sure what they want. I read (the textbooks) and I couldn't see anything that would be offensive to anybody.

"They seem to think it teaches against their beliefs. But I don't know what they believe so I can't say," he said. ("School Officials Say Parents' Complaints Not Legitimate," 17 Nov. 1983, 6)

In his deposition two years later Silvers stated that he'd "read the books, the one [Riders on the Earth] in particular. To me, I could find nothing in there offensive" (Silvers Deposition, 60). Silvers was questioned later about his attitude toward the books and their required use:

Q: Isn't it fair to say that your personal position has been that if [a textbook] doesn't offend the [textbook selection] committee, if it doesn't offend the state committee, if it doesn't offend me, then it's okay. Or we'll make everybody read it, even if it offends somebody else. . . .

A: I think that would--would be a fair assumption of what--what I have said and what I think. (Silvers Deposition, 69)

School superintendent Bill Snodgrass showed the disputed textbooks to the pastor of the First Baptist Church in Rogersville to "see if he saw anything wrong with them" and to get "somebody else's opinion, other than mine."

Q: . . . from what perspective did you want him to see if there was anything wrong with them?

A: I guess from a religious viewpoint. . . .

Q: Okay. What did he tell you?

A: He said he saw nothing wrong with the books. . . .

Q: Do you think that the plaintiffs were being unreasonable in objecting to the books?

A: Yes, because I saw nothing wrong with the books.

Q: Was that the standard that you were using to measure, whether you and reasonable people like you, and your pastor and others that . . . held views similar to you saw anything wrong with them?

A: Well, . . . what I thought and what others thought certainly would have an effect, yes.

Q: And you were evaluating them from your own religious perspective, weren't you?

A: Well, from . . . my total perspective . . . everything that I've learned.

Q: Including . . . what you've learned religiously.

A: Yes.

Q: All right. And you were filtering all that information through your total world view.

A: Yes, everything that I am.

Q: And your religion is part of your total world view.

A: Yes.

Q: And you were evaluating the reasonableness of the plaintiffs' complaints based on your world view, in part.

A: In part, yes.

Q: And . . . in part upon other people, such as your pastor.

A: Yes. (Snodgrass Deposition, 71-75)

School board member Conley Bailey "looked at several books" but could not recall which ones or for exactly how long. He did "vaguely remember borrowing some books, but at the time I felt like the schools needed them more than I

did. . . . I may have kept them over the weekend or something like that." His impressions were that he saw nothing wrong with the books and that he had no objections, religious or otherwise, to them (Bailey Deposition, 23-24). But Bailey had developed strong opinions about the parents' complaints:

Q: . . . do you have any evidence that the Holt books don't violate the Plaintiffs' religious beliefs?

A: It's my opinion they don't. . . .

Q: But you believe that the Plaintiffs' religious beliefs are sincere?

A: Yes, Ma'am.

Q: But you believe they're mistaken in what their religious beliefs are?

A: No, Ma'am.

Q: So if they say that the books violate their religious beliefs are you saying that they in fact don't violate--or that they're just somehow not telling the truth?

A: No Ma'am.

Q: But it's your opinion that their religious beliefs are not violated by these books? . . . You stated that it was your opinion that the Plaintiffs' religious beliefs were not violated by the Holt books? . . .

A: It's my opinion that they're not violated, no.

Q: And on what do you base that opinion?

A: It's my opinion that the Holt-Reinhart [sic] books are the books that's going to be used in Hawkins County until the time that we have to purchase books again which will be two more years.

Q: And that's the reason why you feel that they don't violate the Plaintiffs' religious beliefs?

A: I don't--it's my opinion that they don't.

Q: Are you saying that it's your opinion that the use of the Holt books by the Hawkins County public schools doesn't violate the religious beliefs or that the content of the Holt readers doesn't violate the Plaintiffs' religious beliefs?

A: The use. Probably the content, too, in my opinion.

Q: And why do you think the content doesn't violate the Plaintiffs' religious beliefs?

A: Because most of the material is fiction.

Q: And so you don't believe that a person could have their religious beliefs violated by a fiction story? . . .

A: I would like to think that most people could read something and take it for what it is or isn't. (Bailey Deposition, 66-68)

The essence of this denial process lay in the observation, "I don't see it. Therefore, it's not there." As a result, school officials became the exclusive arbiters of textbook content and the defenders of community values. By claiming they could find no support in the books for the parents' complaints, they dismissed the question of compromise, portrayed the families as radicals, and widened the breach between them and the remainder of the community.

The same pattern of denial was taken up by community members. Jim Sharp spoke of

> the parents in the county who had children in school that took the textbook home with them. The parents looked at these textbooks. And we had,

> you know, several calls that said, "Look! We looked at our child's textbook. We see nothing wrong with it. In fact, . . . the stories are similar to what we read when we were in school" . . . (twenty years and twenty-five years ago for some of them). "So we see nothing wrong with them." So most of the public thought that these people, you know, really were a little bit on the mental side when this thing was brought up.

A Church Hill mother reflected this attitude in a letter which appeared in the Kingsport Times-News on 25 November 1983:

> My children attend the Church Hill School. The recent controversy over the reading books has upset my children terribly. . . . COBS, you are responsible for causing the confusion. You people are creating situations that don't exist.
>
> I have read these books you say are humanistic, self-authoritative, sexist, feministic, etc., and I have found nothing that factually states anything of the kind. . . .
>
> I feel that you, COBS, are a bunch of fanatical troublemakers. . . . All material for such education is selected to benefit all those who attend public school. If you don't like our public school, then I suggest you take your children out and find an acceptable school for them. . . .
>
> So, COBS, keep your fanatical beliefs within your own group and stay out of my children's education. ("Letters to the Editor; COBS Out of Line," 8A)

## A Question of Congruent Value Systems

When asked whether people in the county were supporting the books or the school system, Foster Payne replied that the people in the county "didn't know what the book was. Early on, I didn't know." He went on to cite examples--the portrayal of Christ in one story, the encouragement of young

people to challenge the authority of their elders, and "the preoccupation with death as death education"--which might be considered contrary to local values. But then he added, "I think it's the times. And that this book [he was referring here to sixth grade reader, Riders on the Earth] just reflected the times."

School supporter Harold Osborn, who "went through one book pretty thoroughly," responded to the same question,

> I really find it hard to answer . . . because I'm not real sure just what values that those textbooks convey. One of the values that it seems to convey, if this can be considered a value, is an understanding and tolerance of all people and all things.

Later, he added,

> I'm not overly fond of the texts. I'm not critical of 'em. I'm critical of the publishers. . . . [T]hey don't have enough about religion in there. About our heritage and our religion and our religious basis and so on, but you can see where they're comin' from. They're scared. They try to water it down till you've got pap, something that nobody's offended by.

According to county educator Jim Sharp, the people were supporting the school system rather than the books. He explained,

> If it had been any other textbook . . . let's say the Hart, Wilcox textbook had been chosen, and they had brought up an issue like this. After the parents had reviewed the textbook and saw that it was all right, they would have probably agreed with the board of education, too. It made no difference. If they thought the board of education was correct in selecting the textbook, they would have supported it.

David Wilson and Clay Bowers saw things differently. Wilson said that

> it's hard for me to answer . . . taking the values of Hawkins Countians and making them consistent with the values that are being promoted in the textbooks that they are defending. It's hard because they're two completely different sets of values. . . . [T]he textbooks promote equal rights for women. . . . They promote peaceful coexistence between nations. . . . They promote somewhat equal rights for animals. . . . They are pro-gun control. . . . [T]hose are some of the social values that are promoted in the textbooks. And those values are not values that are held by Hawkins Countians. . . . Most are not strong supporters of the Equal Rights Amendment. Most are not people who would be offended by someone going out and shooting an animal. Most are not strong advocates of nuclear disarmament. . . . Those are some of the social issues involved. Religious values involved in the textbooks promote a[n] understanding of other people involved in other religious beliefs from other cultures. . . . [I]t made the students empathize with people and to have more knowledge of people that are in completely different cultures, having completely different religious beliefs. . . . And that is a religious value that is, I can assure you, not held by the majority of Hawkins County residents. . . . You know, this is a predominantly Baptist region. . . . [R]eligious tolerance for Hawkins County might be Baptists accepting Methodists. But when it comes to Baptists accepting the religious beliefs of Islamic people or Buddhists, that is beyond the value system of rural East Tennessee. But yet this was the value system that was being promoted in the textbooks, and that is why I say that the value system in the textbooks is not consistent with the value system of people in Hawkins County.

Clay Bowers had "taken the textbooks home and read passages here and there." His impression was,

> On the surface, so what? Didn't look that much different than what I learned. Digging down into them a little deeper, there was certainly a lack of any reference to Judeo-Christian ethic. And then the situational ethics were there. . . . And

> some of the points the plaintiffs made were there. Whether I would let my children read them or not, I probably would and try to balance it with my own viewpoints.

When asked if he felt the textbooks reflected the values held by Hawkins Countians, he replied,

> [G]ive the textbook to a . . . group of Hawkins County [citizens] . . . have them read it and ask them, "Do these violate your values?" They would say "No." . . . Now, you take the publishers and the editors, maybe even some of the writers of Holt, Rinehart, Winston . . . and let them publicly express their values to a group of Hawkins Countians, and I think the Hawkins Countians would <u>disagree</u>. So my point is that what they read and the values they see in the books would not bother them. What the underlying values of the book <u>are</u> I think would somewhat bother them, if they were expressed . . . not in a story but, say, . . . let's list the values rather than through a story, through figurative speech portray those values. Maybe that's harsh on the average Hawkins Countian, that they wouldn't read deeply.

In response to the suggestion that possibly the plaintiffs were more perceptive, Bowers replied,

> No. I think they made an effort. . . . There's a lot of intelligent people in this county. But [the parents] made an effort to study what the underlying values were. And the average Hawkins County citizen would read and say, "Well, that's fine with me." They wouldn't study. They would take the bits and pieces and say it's fine, maybe, without looking at the whole picture unless it was presented to 'em. And even presented to 'em, if it's presented in the wrong way, they would still say, "No." I think the books contain values that would upset them. I don't think the people would recognize that.[28]

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[28]Compare Bowers' analysis with the contents of the letter from the Church Hill mother (supra 146).

To illustrate his point, Bowers told of a teacher he and his wife know well who

> thinks [the books] are wonderful and does not see anything wrong with the values. Two reasons. One is she sided with her other teachers. Peer pressure. Two. . . . she's never pulled them out and looked at the values alone. She's just looked at the whole of the textbook and then said, "This is a good teaching tool." And probably now she's defensive enough she never would open up to saying, "Let's just see what these values, the underlying values of this story, are and then take the stories all together in the book."

The Books, Their Detractors and Defenders: An Overview

There are two keys to a better understanding of the parents' complaints. First, their objections were directed at themes which they contended began with the second grade readers and continued throughout the remainder of the Holt series. And second, the children using these books were, in the eyes of the parents, in a very formative, impressionable stage of their development.

Judge Hull recognized and accepted the parents' argument about the thematic nature of the textbooks. But this concept was never persuasive to the general public or to school system representatives. Both denied that any basis for objection existed and discredited the legitimacy of the parents' complaints, largely as a result of the Goldilocks incident.

The school system's defenders started from a position that not only was nothing wrong with the books but also that Hawkins County attitudes and values fell within a specific

range of norms. Anything beyond this range was "outsider," "radical," and "extremist." Harold Osborn felt that the books conveyed "understanding and tolerance of all people and all things," and that tolerance was one of the qualities of the Hawkins County character. But there is no evidence of tolerance for divergent views in the comments of school board chairman Harold Silvers, school superintendent Bill Snodgrass, or school board member Conley Bailey.

The school system had valid reasons for selecting the Holt readers, although none of these reasons dealt with the value content of the books. But because the selection process involved teachers and school administrators who held a trustee relationship with the community, once a set of books was selected, it became, as David Wilson observed, part of the community tradition. Viewed from this perspective, an attack on the books became an attack on the selection process, the judgment of the trustees, the public schools, and the local culture. Here the conservatism and defensiveness of county residents came into play. In the words of Clay Bowers, they could criticize their family, but an outsider was not welcome to do so. In such an atmosphere local perceptions of the value content of the books did not go beyond identification of the texts with the people who selected them and with the local schools. Attitudes toward the HBR series thus were becoming polarized. In the view of many local citizens you either supported or rejected the

county culture by supporting or rejecting the textbooks. There was not much room for compromise.

## CHAPTER IV

## THE CONTROVERSY: THE COMMUNITY PHASE

A common response to community controversies is to follow the will of the majority. Two assumptions underlie this procedure. The first is that majority rule is an appropriate means for self-government and for the determination of public policy. And second, a minority must accede to the majority for the sake of community stability. While this is the essence of democracy, it is also a wellspring of power and of what Tocqueville labeled "the tyranny of the majority" (250). Moreover, the stability the system is designed to protect may be imperiled as the community becomes polarized by particularly sensitive issues. In order to avoid such a consequence the two factions may seek compromise in an attempt to restore a sense of common interest and shared identity. On the other hand, the majority may persist in imposing its will and may even socially if not physically excise the minority, thereby becoming a new but diminished community.

A similar situation faced Hawkins Countians when the textbook issue arose shortly after school began on 22 August 1983. Although the controversy extended for more than five years, it consisted of two distinct phases. During the first three months, until shortly after the families filed suit in federal district court on 2 December 1983,

interaction took place directly between them and school officials as efforts were made to resolve the conflict. It was during this initial period, what is identified here as the community phase, that emotions intensified, attitudes began to polarize, and resources within the community were challenged to provide a compromise solution. (A chronological listing of the major events of this community phase is presented in Table 3.)

Three issues competed for resolution during this phase. One of these concerned the free exercise of religion. The parents' complaints about the Holt readers were based on what they perceived to be violations of religious liberties guaranteed by the First Amendment's free exercise clause. They considered large segments of the readers not only to be offensive to their religious beliefs but also to tend to inculcate in their children's minds a contrary belief system. Local educators had to decide: Were these complaints legitimate and what might be an appropriate response from the school system? A second issue dealt with competing responsibilities in the education of the child: In questions concerning value content of the curriculum, who should have final authority, the parents or the state? And finally, what solution would be in the best interests of the entire community?

## Genesis of the Controversy

The seeds of the five-year-long conflict were planted in late August 1983 when Vicki Frost's oldest daughter Rebecca asked her mother for help with questions at the end of the first story, "A Trip to Mars," in her new sixth-grade reader, Riders on the Earth. As Mrs. Frost read the story, she detected "concepts of mental telepathy that were contrary to our religious beliefs" (Vicki Frost Deposition, 2-3 April 1986, 148). Later, she explained that "this story portrays thought transfers and telepathy and does in such a way that it could be considered a scientific concept." It could lead, she said, to the conclusion that man "is continually evolving to a better state. This is just one of the mind powers that he seeks to increase, his mind's capabilities to save himself, to be his own savior, to rule his world apart from God" (Mozert Record of Trial 14 July 1986, 35).

During the next several days Frost continued reading selections from her daughter's textbook. After discussing her impressions with her husband and finding that he shared her concern, she called a friend, Jennie Wilson, and discussed the first story with her (Frost Record of Trial, 22 January 1986, A11-A12). Soon afterward, she contacted

TABLE 3

Chronology of Major Events
(Community Phase -- Fall 1983)

| Date | Event |
|---|---|
| Mon 22 Aug | School begins. |
| Thurs 1 Sep | Presentation at Church Hill Middle School by Vicki Frost and Jennie Wilson. |
| Tues 6 Sep | Vicki Frost makes first contact with the Gablers. |
| Thurs 8 Sep | Parents present their complaints to the Hawkins County Board of Education. |
| Fri 9 Sep | Use of alternate readers begins at Church Hill Middle School. |
| Thurs 22 Sep | COBS advertisement appears in Rogersville Review. |
| Thurs 29 Sep | First COBS meeting. |
| Mon 3 Oct | Baker daughters enroll at Carter's Valley Elementary School. |
| Thurs 6 Oct | "Goldilocks" letter appears in the Rogersville Review. |
| Thurs 13 Oct | Bob Mozert presents COBS' four points concerning county schools to Hawkins County Board of Education |
| Mon 17 Oct | Baker children withdrawn from Carter's Valley Elementary School. |
| Wed 19 Oct | School system makes first contact with People for the American Way in Washington, DC. |
| Tues 25 Oct | Second COBS meeting. |
| Thurs 10 Nov | Hawkins County Board of Education votes unanimously to require teachers to "use only textbooks adopted by the board of education as regular classroom textbooks." |

Table 3 (continued)

| Date | Event |
|---|---|
| Mon 14 Nov | Late afternoon meeting between parents, accompanied by Kingsport attorney, and school officials at Church Hill Middle School. |
| Tues 15 Nov | First suspension (three days) for Church Hill Middle School students. |
| Sat 19 Nov | Vicki Frost advised of possibility of truancy during phone conversation with Church Hill Elementary School principal Jean Price. |
| Mon 21 Nov | Vicki Frost meets with school officials at Church Hill Elementary School and offers to be parent volunteer. |
| Tues 22 Nov | Vicki Frost asked by police to leave Church Hill Elementary School grounds; Frost makes first contact with Concerned Women for America in Washington, DC; third COBS meeting; second suspension (ten days) begins. |
| Wed 23 Nov | Vicki Frost arrested at Church Hill Elementary School. |
| Thurs 24 Nov | Thanksgiving |
| Fri 2 Dec | Parents file lawsuit in federal district court; Jean Price sends out letter concerning PTA meeting. |
| Mon 5 Dec | Meeting at Church Hill Elementary School; CARE, school advocacy organization, is formed. |
| Thurs 8 Dec | Meeting of Hawkins County Board of Education; third suspension (ten days) issued. |
| Tues 13 Dec | Suspensions lifted. |
| Wed 14 Dec | Parents begin enrolling children in schools outside Hawkins County system. |

the county school superintendent, Bill Snodgrass.[29] Frost stated that her purpose in calling was to make him "aware" of the story's content and her complaint about it. According to her recollection of the conversation, she did not request a separate reader or a separate class for her daughter. His response, she recalled, was "Maybe we can take the scissors and cut that story out." Frost didn't "know if he meant it seriously or not," but she didn't consider it an acceptable solution (Vicki Frost Deposition, 2-3 April 1986, 148-49). Snodgrass recalled only that someone--he thought it was a female--had called him

> prior to the September board meeting and lodged some complaints against the books. . . . [W]e agreed for them to meet with Mr. [Joe] Drinnon [curriculum supervisor for the county's elementary schools] and Jay Salley [principal at Church Hill Middle School] and try to work it out. That's all I recall about it. (Snodgrass Deposition, 89)

Sometime in late August Frost also called Salley, expressed to him her concerns about the textbook, "suggested" these concerns were based on her religious beliefs (Salley Deposition, 19), and requested the use of the school cafeteria for a meeting to air her concerns with interested parents and teachers.

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[29]At that time Snodgrass was serving the third of a four-year elected term as superintendent of Hawkins County's school system. For twelve years prior to his election he had been a principal of one of the local schools. In 1984 he was defeated for reelection. When asked later if he thought the controversy had contributed to his defeat, he acknowledged that "there possibly would have been some significance there" (Snodgrass Deposition, 5-6)

That meeting, which took place on the evening of 1 September 1983, gave the community its first public notice that a problem existed with the newly adopted reader series. Estimates on the size of the crowd vary but range between one hundred and one hundred and fifty. Those in attendance included a few school officials, a number of teachers from schools in the upper end of the county, and parents. Speakers included Vicki Frost, Jennie Wilson, and a Reverend Billy Christian. According to Frost, Wilson

> made charts about Hinduism and different things like that. Because we were alleging . . . that there was a great Hinduistic influence in the book. . . . [Reverend Christian] spoke on . . . the occult and clairvoyance and telepathy. And he had done quite a bit of research. . . . And then . . . there was crowd input. . . . [T]here were different people that did stand up in the crowd and say a word or two. And the local radio announcer of the Christian radio station in Church Hill, he made a few comments in support. (Frost Interview)

Options and alternatives were not discussed and no suggestions or requests were made (Vicki Frost Deposition, 2-3 April 1986, 160-61).

Foster Payne described his impressions of the meeting:

> I went as a representative for the board, and I took a notepad. . . . I figured they probably had naked statues or might've said four-letter words, which, you know, you see that in so many places. . . . I just figured that I was gonna take notes, and I was gonna mark out in those books, over the county, inappropriate four-letter words or conceivably cut out a picture of a statue or take a magic marker and send out a mandate that we would mark through this or that. . . . I guess I was gonna do a little editing. 'Course, that didn't turn out to be even remotely their agenda. . . . I asked them where they got their ideas.

> And Mrs. Wilson had taken a course from a Bible college in Bristol, which taught her how to identify all this stuff, to recognize the great problems in our society. . . . [She] thought that education had been a conspiracy. John Dewey in there with the rest of them to take over the parents' role in raising the children. And it'd gotten out of hand and the parents had lost control of it. And she thought that they shouldn't. . . . Anyway, I questioned them to try to learn what we could do. And I would've wished to censor for them at that point, if I thought I could find . . . something to get a grasp on. "Are you a Baptist? And do all the Baptists? . . . Are you what?" . . . [T]hat wasn't their ideas. It was a thing that they were being used to focus many peoples. And it was, I think, ultimately an attack on public education. . . . In other words, a lot of people had agendas and they were using these people. . . . And I was just absolutely stunned and swimmey-headed at this point, going with such a simplistic thing as thinking I would scratch through a four-letter word or take notes on what to do about these books. This was <u>ideas</u> and things. . . .

Payne added that "if Vicki Frost had thought that what they were doing was gonna hurt her children and would have told me, 'I just feel like this,' I'da just tried to have done something for her." According to Frost, one school administrator told her after the meeting "that the children should be accommodated; that possibly they could get a teacher and set aside a place for the children to read" (Vicki Frost Deposition, 2-3 April 1986, 162).

Foster Payne observed that

> they had cue cards for Vicki at this event so that she could advance their idea. I mean, this wouldn't be entirely wrong . . . it would be good for me because I'm not an articulate speaker. . . . [B]ut I knew from conversations with Vicki . . . that she didn't know what she was talking about. And that's a fact, because of her use of the words and even ideas that she couldn't describe early

on. Although she later became quite polished . . . and it became her truth.

It is difficult to reconcile this observation that Frost "didn't know what she was talking about" with the recurring charge that she was the mouthpiece for some outside group with a well-formed agenda. If she were the point person, one would expect her at this crucial public introduction to the controversy to be more articulate and more knowledgeable in the theoretical applications of her criticisms. Instead, it seems more likely that she was nothing more than what she said she was, a concerned parent who detected values in the textbooks antithetical to her own, and that she was as Clay Bowers had said of all the parents, "convicted at that time that these textbooks were not what they wanted their children to read."

During the ensuing days and weeks much of Vicki Frost's energy and attention was devoted to gathering more information about the books and seeking reinforcement for her own apprehensions. This was also the time when the core of protestors began to form. In addition to Jennie Wilson, one of the first persons Frost consulted was Bob Mozert. Frost explained,

> I had attended church with him for a very short while. . . . [A]nd then my husband had his son in Cub Scouts. And so he was an acquaintance, one that, you know, I could take the chance with and call up on the phone and say, "I'm gonna bring this book by" or . . . "Would you care to look at your son's book" or whatever. . . . But he was enough of an acquaintance that I knew he was a Christian, that he might hold the same beliefs

> that I did, and I . . . did contact him. (Frost Interview)

Chance contacts brought others in. "I didn't know the Eatons," Frost continued,

> but Brenda Marshall knew the Eatons. I shared with Brenda Marshall. Brenda Marshall shared with the Eatons. Whitakers--their son played baseball with Marty. You know, they were casual acquaintances. . . . Didn't go to church with 'em. Didn't go to church with the Eatons. Didn't go to church with the Marshalls. . . . [T]he Meades. Went to church with her for a while. And that's how I made contact with them. . . . And then the Couches were friends of the Mozerts.[30] (Frost Interview)

What the families came to share was a certitude that the material in the books violated their religious beliefs. According to Bob Mozert's analysis, the parents

> saw those convictions being attacked through the content of material in these readers, because, as the word began to get out about the objections to the readers, the word would have started to spread through Hawkins County. Then people began to look at these readers. They began to see what was in these readers. Some might not have objections to them. . . . Some objections would be stronger than others. Some people might not see, well, that's not much of a compromise. And others say, "Well, that's very strongly opposed to Christianity. Now, I'm not going to allow my children to be indoctrinated." And that's the ones that began to stand up. So, I believe that's exactly how it came about. (Mozert Interview)

On the Sunday afternoon following the September first meeting at Church Hill Middle School Vicki Frost and Jennie

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[30]The Marshalls initially joined in the suit but later withdrew. Their daughter Gina, who was in the sixth grade with Rebecca Frost, was suspended three times but ultimately returned to Church Hill Middle School when the suspensions were lifted (infra 229-31).

Wilson met with the school's principal, Jay Salley, to obtain more books to review. According to Frost, Salley made the comment "that these books were on the Gabler's list of approved books in Texas." At that time, Frost "didn't know who the Gablers were" (Vicki Frost Deposition, 2-3 April 1986, 168-69), but she quickly found out. Her telephone records indicate that on the following Tuesday she placed a call to Longview, Texas. Whether as a result of this call or contacts made by Bob Mozert, the parents received literature from the Gablers and learned that the Holt books had not been approved by the Gabler organization. At subsequent meetings during the community phase of the controversy the parents shared information received from the Gablers with school officials and others. As a result, they began to be perceived throughout the county as being under the influence and direction of the Texas couple.[31]

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[31]Another possible explanation for the use of Gabler material is that the parents were seeking what they considered to be authoritative sources to support their initial misgivings about the books. During the trial Mozert was cross-examined about the parents' dependence on Gabler material:

> Q: Now, you relied . . . slightly on the various materials that Mr. Gabler sent you in connection with the preparation of those objections, isn't that correct? . . .
>
> A: Slightly, would probably be inaccurate. In the presentation of this we relied heavily upon the subcaptions and categories, I believe.
>
> Q: But not on specific analysis of the stories?

School Board Reaction

The school board was officially advised by the parents of their complaints at its monthly meeting on Thursday evening, 8 September 1983. The atmosphere had been charged by news articles which had appeared in local papers earlier that day. School board members, who had unanimously adopted the Holt reading series four months earlier and had heard no dissenting voices regarding its merits, were told by the Kingsport Times-News that Vicki Frost intended that evening to "ask the five-member board to remove Riders on the Earth, the textbook for the sixth-grade reading classes in the county" (Ken Crowder, "Hawkins Woman to Request Removal of School Textbook," 8 Sep. 1983, 8A). And the weekly Rogersville Review devoted extensive front-page coverage to the September first textbook meeting at Church Hill Middle School, quoting Frost as saying about the sixth-grade text, "You can take every page of this book and there's something objectionable in it" (Kathy Bean, "Parents Object to School Text," 8 Sept. 1983, A1).

Since the controversy soon became associated in the news media and the public mind with censorship, the question of what the parents were actually asking the board to do became, in the weeks and months that followed, a central issue. It is not surprising, then, that accounts of what

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A: No, sir, we preferred our own. (Mozert Record of Trial, 16 July 1986, 715).

transpired at the meeting differ considerably. The board minutes--which some parents charged were altered--stated that

> Mr. Silvers recognized Ms. Vicki Frost who in turn introduced Ms. Wilson, Mr. John Pendleton [pastor of Calvary Lighthouse Baptist Church], and Bob Mozert. They all spoke about the Holt series of reading books. They stated different religions were being taught by these books; that the books were teaching religion contrary to the law of the land; that the books were anti-bible; that they taught telepathy, witchcraft, black magic and sorcery - the practice of the occult; that the books taught evolution. They stated they resented Hawkins County teaching evolution as fact and asked that the books be removed. They further stated that the Holt series of textbooks teach Hinduism, astrology, and Shintoism, which are all religions, and they teach the children to use mind control on their parents. . . .
>
> Ms. Frost then asked the board to obey the law and give them textbooks that do not teach religion. (Official Minutes of the Board of Education, Hawkins County, 8 Sep. 1983, 108-9)

The Amended Joint Stipulation of Uncontested Facts offered a slightly different version:

> At the regular meeting of the Hawkins County School Board on September 8, 1983, Mrs. Frost, Mr. Mozert and other individuals informed the Board that certain materials in at least one of the Holt Readers were offensive to their religious beliefs. Petitions were presented to the Board which read as follows:
>
> "PETITION
>
> To stop innocent children from being indoctrinated into false supernaturalism and introducing them to the teachings of the Wicca religion. (telepathy)
>
> Mr. Congressman, members of the Hawkins County school board, and all honorable people involved, we the undersigned are petitioning the Hawkins County school board, and our congressman to stop

> innocent children from being taught false supernaturalism, and an anti-christian doctrine through the use of the sixth grade reader (RIDERS ON THE EARTH)." (Amended Joint Stipulation . . ., 16-17)

According to the Kingsport Times-News, two hundred and twenty-five parents had signed the petition (Ken Crowder, "Hawkins Refuses to Ban Textbook," 9 Sep. 1983, 3A). Frost stated that the document had been drafted by a parent who never became "involved in the textbook case, but he, maybe a year after that, took his kids out and put 'em in Christian school" (Frost Interview). Both Frost and Mozert believed they signed the petition (Frost and Mozert Interviews).

Whether this petition was asking that the book or books be taken out of Hawkins County schools or simply that children of the signatories be provided with other more suitable materials depended on the point of view of the reader. But three of the five board members were convinced that the group asked during the meeting that the books be removed from the school system (Conley Bailey Deposition, 17-18; Doug Cloud Deposition, 13; Bob McKee Deposition, 6). The board chairman however, recalled only that they asked "to have either an alternate book, or allow them to have special assigned work." He felt they were not asking for a county-wide policy (Harold Silvers Deposition, 13). Mozert believed that

> Harold Silvers' recollection is more correct, because I do not recall having asked to have those books banned. Of course, I've been accused of book burning and everything else. We've not

> burned one of them yet. That was not my intention . . . to get the books banned from the local school but to have my children exempt from reading those books. (Mozert Interview)

And Frost contended that

> we merely stated our objections, made them aware that we objected to materials in the books which violated our religious beliefs, asked that they give us books that did not violate our religious beliefs. We did not ask for the books to be banned. (Vicki Frost Deposition, 2-3 April 1986, 166)

The receptivity of the board to the parents' complaints became another subject for contention. The parents perceived it as condescending, abusive, and disrespectful. "If you . . . had a tape recording of that first meeting that we were at," Vicki Frost recounted,

> Mr. Silvers, I believe it was, when I was addressin' him. . . . You know, he kinda reprimanded me. He said, as if, "You talk to me. You look right [at me]." . . . And I reminded him . . . that he was a public servant, that he wasn't there to lord it over. . . . But it's this mentality that . . . "We're here to govern you and who are you? [A] person who is powerless and has no credibility or power before this board." And it was that type of situation. . . . [T]hey would mock and make jest and laugh. . . . Mr. Silvers . . . had . . . some kind of a cross. And he pulled it out and said, "What do you think about . . ." I believe it was Snow White and the Seven Dwarfs. You know, just ridiculin'. And like . . . "What church do you go to?" (Frost Interview)

Farley Meade concurred. To him, the meeting

> seemed to have gotten out of hand. It seemed to me that the school board was not very attentive to what was being said. They were ridiculing it. . . . Some of them [school board members] just acted like we was a bunch of kooks. (Farley Meade Deposition, 17)

And Bob Mozert explained that "we were all interrupted by the school board members, by a certain individual in the audience, made fun of, jeered at" (Bob Mozert Deposition, 227). On the other hand, board member Conley Bailey felt that "the board was very cordial to the group. They listened" (Conley Bailey Deposition, 16-17).

Discussion of the issue ended when the chairman, Harold Silvers,

> stated that the Holt series of books were selected by a committee of teachers, approved by the board by a unanimous vote. These textbooks will be taught in the Hawkins County School System until: 1. The State Department of Education disapproves; 2. The court prohibits their use; or 3. The committee recommends a different textbook and the board approves.

The parents inquired what would happen if their children did not participate in the reading classes and were told that "they would receive a failing grade" (Official Minutes . . ., 109).

Near the end of the meeting Conley Bailey prophesied that "nothing but bad publicity for the county will come out of this thing" (Official Minutes . . ., 109).

Efforts at Accommodation

For the parents the experience of the school board meeting emphasized the need to develop realistic, clearly defined objectives. Having been rebuffed and ridiculed and facing the possibility of their children receiving a failing grade for reading, they began individually to seek some

satisfactory alternative. The following morning Mozert went to Church Hill Middle School

> because my son had reading the first period and [I] talked to the principal . . . and Mr. Salley made a telephone call in his office while I was there and talked to someone . . . in a position of authority over him, and I would assume that it would probably be the superintendent, the way he addressed him. . . . And he got permission. . . . So, he said, "Okay, fine. Then we'll go ahead and offer the alternate reader" . . . Adventures in Reading . . . which was on the state-approved list, which was the book used immediately before these books. . . . [Travis] was sent to the library sometimes and also sometimes to the cafeteria . . . and given a reading assignment . . . [and] had questions to answer. . . . We looked at those books ourselves and they were good books. . . . They held fast to the American traditions and the traditional family-type role. (Mozert Interview)

During the next week or two the Frosts, Mrs. Couch, Mrs. Eaton, and other parents had similar experiences with Salley. The principal estimated that at its peak he had "nine or maybe ten" middle school students studying reading under a variety of alternative arrangements (Salley Deposition, 37). Frost was questioned on the provisions for her two oldest children:

> A: Marty brought home a book, Rebecca brought home a book, and then I asked that Rebecca be given another reader. When he [Salley] said they could have an alternative, he said they could go to the library. So Marty was to go to the library, and Rebecca was able to go into a little office type room that adjoined the regular classroom to be . . . apart from the listening of the Holt, Rinehart, Winston Reading Series during class time.
>
> Q: All right. And were you comfortable with that?

A: Yes.

Q: . . . And who was with your children when they were doing this?

A: The librarian was with Marty. . . . [T]he children were to go to the teacher, to their class to begin with, receive the assignment and go to the library to work on their assignment, and, of course, the librarian was in the library.

Q: . . . Then how long did this arrangement go on?

A: From approximately September 13 or thereabout until November 11, 1983. . . .

Q: Was anybody ever in there with her [Rebecca] during reading time?

A: Her teacher may have given her instruction. . . . I don't know if she received her instruction before going to the room or in the room. She was basically left, as far as I know, to herself.

Q: Was that okay with you?

A: Yes.

Q: . . . And how long would she stay in this room by herself?

A: My understanding is about forty-five minutes. (Vicki Frost Deposition, 2-3 April 1986, 173-74)

Accommodation thus began without fanfare and in piecemeal fashion at Church Hill Middle School shortly after the September school board meeting. Both the superintendent and the school board chairman later confirmed that they had known about the program and had either given permission or raised no objection to its inception (Snodgrass Deposition, 93-94; Silvers Deposition, 113-14). But other board members

were to profess their ignorance of such arrangements (infra 192ff.).

Jay Salley, the principal at Church Hill Middle School, began to emerge at this time as a tragic character in the unfolding drama. A long-time county educator, he had been football coach and teacher for twenty-five years at Church Hill High School before becoming middle school principal when the county-wide restructuring occurred in 1979. At least two of the fathers, James Eaton and Ernest Whitaker, had played football for him at Church Hill High. He knew several of the other parents well. One interviewee recalled affectionately that "Jay Salley . . . who I love dearly . . . is a good Christian man and he likes to accommodate everybody, he wants to get everybody happy." When Salley was asked why he permitted the use of an alternative, he replied, "Well, I really wanted to try to avoid trouble, you know. . . . I wanted to honor the parents' request" (Salley Deposition, 35). But trying to meet the parents' perceived needs and still fulfill his responsibilities within the county school structure placed him in an untenable position. In effect, he was attempting to bridge what was soon to become an ever-widening gulf. Another interviewee observed, "Jay Salley worried about it. He is absolutely tolerant of all people and all things. And there was no answer. It absolutely <u>destroyed</u> him. . . . 'Cause he didn't know what to fight."

Soon after Salley began the alternative arrangements at the middle school, Quentin Dykes, the principal at Mt. Carmel Elementary School, told Sandra Couch that her third-grade son Sam would be excused from the classroom and permitted to sit outside in the hall when a few selections (Couch thought it was five; Dykes remembered three) from the Holt reader Never Give Up were discussed (Sandra Couch Deposition, 130-131; Dykes Deposition, 24-26). Sam Couch was the only student to be permitted an arrangement at Mt. Carmel Elementary. No alternative text was requested or granted.

Thus, by late September or early October varying forms of accommodation were being practiced in two schools in the northern end of the county and the parents appeared to be satisfied with the arrangements provided. But Foster Payne reflected back on the situation:

> Could accommodation [on a long-term basis] have been done? I just don't know. From Vicki I got the feelin', "Well this won't do." Then what will? I don't know how far they would have carried it. . . . In the meantime we were havin' school, you know. And as busy, short staffed as we were, and tryin' to get the last of the materials in the schools and all. It's hard to know, to analyze, but we conjectured that . . . there'd been no end to it, once their appetites came about. And with the concern for public schools and all these things, and once they got on a roll, it's just possible that accommodation of any sort might have been taken as a weakness and exploited until it would have been a foothold.

"Citizens Organized for Better Schools"

School officials might well have concluded that the parents' appetites had "come about" when they read two separate items which appeared in the 22 September 1983 edition of the Rogersville Review. An advertisement two columns wide and ten inches in length and captioned "PUBLIC NOTICE," stated the beliefs of an organization identified as "Citizens Organized for Better Schools (COBS of Hawkins County, TN)." It also solicited affirmation of these beliefs by providing a statement of agreement which citizens could sign and return. The beliefs included teaching love of God and country, allowing daily prayer or silent meditation, prohibiting teaching of evolution as fact, prohibiting the teaching of secular humanism and "other false religions," teaching "factual truth with moral value," restoring "the dignity and conviction of education," and treating children as "unique and individually special" rather than "as a computerized statistic." Also included among the beliefs were the statements that "the Public should actively participate in the operation and regulation of public schools, both economically and politically," and that "authority should be delegated but never relinquished by the Public." (A3). There was no solicitation for funds and no individual names appeared in the advertisement.

The second item was a letter to the editor which appeared over Bob Mozert's name and dealt with goals of

Citizens Organized for Better Schools, thus tying that organization to the parents who had been voicing complaints about the textbooks. The letter read:

> Developing a child's mind is a task that should be done with utmost care. For this reason, there is a growing concern among Hawkins County residents with regard to the education of their children.
>
> We as Citizens Organized for Better Schools of Hawkins County (COBS) urge you to get involved in the education of your children. More specifically, study your child's reader in the Hawkins County school system and see for yourself the content of the text. If you don't like what you see, contact, COBS, P. O. Box 1747, Mt. Carmel, TN 37642.
>
> You have a voice in your child's education. Make it count! ("Letters to the Editor: Developing Minds," 22 Sep. 1983, A2)

The next day Mozert, using the title of Director, Citizens Organized for Better Schools, addressed a personal letter to Snodgrass requesting four pieces of information: whether local taxes were "going back into the same district from which they were collected in a fair and equitable manner"; a copy of the school system's financial report for the previous fiscal year; "the academic rating of the state of Tennessee in relation to the other 49 states"; and the ranking academically of Hawkins County in Tennessee (a copy of this letter was provided to the author by Vicki Frost).

The following Thursday, 29 September, the first of a series of "reviews" in the form of letters to the editor appeared in the Rogersville Review. This introductory letter, which discussed a story in the eighth-grade text,

Great Waves Breaking, appeared over Mozert's name and Citizens Organized for Better Schools. In the letter Mozert explained that

> each week we intend to review textbooks from Kindergarten through eighth grade in the Holt, Rinehart, Winston series to inform the taxpayers and parents in the area what our children are being subjected to under the guise of public education. ("Letters to the Editor: Reviews Text," 29 Sep. 1983 A2)

A week later, in the 6 October issue, the controversial "Goldilocks letter" (supra 132ff.) appeared as part of this review series.

From the county educators' and the general public's perspective, these communications could only be interpreted as charging that the local schools were not performing in a professionally responsible manner. They challenged the judgment and authority of school officials as well as the status quo within the school system. Their effect was to increase the system's defensiveness--a posture it had already assumed as a result of pressure from other sources (supra 62-63, 68-69)--and to exacerbate local sensitivities and frustrations.

But from the parents' point of view, they and their fellow citizens were being disfranchised; they were losing their right of participation and control in what had been a public institution but was now being taken over by alien, anti-country, anti-God, humanist forces.

Although Citizens Organized for Better Schools (COBS) gave the illusion of reality by the appearance of its name in the September twenty-second advertisement and Mozert's use of the "Director" title in correspondence, the first meeting of the group was not held until Thursday, 29 September. The purpose of COBS "was to address concerns about various alleged practices of Hawkins County Public Schools, including the use of the Holt textbooks." Yet it enjoyed at best an ephemeral existence. It met on only two other occasions, 25 October and 22 November 1983, and it "did not have formal members and no formal votes were taken to establish policies or positions" (Amended Joint Stipulation, 16).

COBS became associated in the public mind with the parents who had objected to the textbooks, but some of these parents were equivocal about their relationship to the organization. Sandra Couch explained that

> there was a newspaper article--I was aware of COBS before this newspaper article because I was acquainted with the Mozerts but had not attended a COBS meeting until the Times-News published a newspaper article stating that all the parents of the children who had been suspended were members of COBS. So my husband [and] I decided if we were members, we'd better go see what we were members of. (Sandra Couch Deposition, 115)

But later in her deposition she disavowed ever having been a member of COBS (123). Likewise, Farley Meade said he did not consider himself a member of COBS:

> Q: Do you see anything wrong with being a member of COBS?

A: I really don't know much about them. I don't know what they stand for. (Farley Meade Deposition, 21-22)

Mozert recounted the brief history of COBS:

> I formed COBS. . . . And the first meeting we had, we had thirteen people there. That was including myself. The second . . . meeting we had fifty people there in support of us. The third . . . meeting we had a hundred people there, so you can see . . . how it began to multiply. Well, the other side, of course, was very afraid of that. They started a mass campaign. . . . We started getting some threatening phone calls. They were taking stronger measures. Our home was threatened to be burned. Things like that. I saw things developing. I had read a book earlier, since this case began to arise, [about an incident] that occurred in Kanawha County in Charleston, West Virginia, about ten years earlier. And it was an objection to humanism in textbooks, exactly the same thing. And how other elements outside of the local vicinity came in to defend these textbooks. And what it led to--a man was killed, schools were bombed, homes were burned. And I saw the exact same thing beginning; there was a polarization occurring. . . . And I could see very well that we were headed in that direction. Well, that, of course, was not the direction we wanted to go in. We're not [a] bellicose group of people, so I decided to disband COBS, not have the meetings any longer. (Mozert Interview)

Although evidence supports Mozert's contention that the people who made up COBS were not a "bellicose group," under his guidance the organization was certainly confrontational in its tactics. Such an approach toward school officials at this juncture, when the families were being accommodated with alternate texts and other measures, seems highly questionable and lends credence to Foster Payne's concern about the parents' appetite once they tasted success.

The 29 September COBS discussion set the stage for the parents' next encounter with the school board, an encounter again marked by confrontation and criticism--at least in the eyes of school personnel--at its meeting two weeks later. Vicki Frost explained her intentions and those of other parents as they reviewed the situation and prepared for the school board meeting:

> Well, we didn't have an agenda. What I'm sayin' is that we weren't . . . really thinkin' about textbooks, a textbook case, or anything. Our kids had an alternative. You know, as far as we were concerned, <u>that</u> was settled. . . . We had no indication that it was gonna change. . . . [A]s far as I knew, everything was goin' fine. And so our natural response was, you know, if we're gonna continue this thing on, let's get involved in public education. And then . . . one says, "Well, . . . I discovered that my children have not said the Pledge of Allegiance, that they don't say it at school." And then another parent . . . got to talkin' and "Well, they've not said it at our school either." And . . . that was part of our growin' up was . . . at the beginning of the day . . . in elementary school . . . they rose in the mornin' and said the pledge to the flag. And then [the parents] got to lookin' around, and [one said] . . . "Well, they've got an outdated Pledge of Allegiance here. It doesn't even have 'under God' in it." . . . And then . . . we talked about the moment of silence: "Well, now, they don't do that at our school." . . .
>
> See, we have been passive parents. . . . [L]ike most people. You send your kids. . . . You know, they want you to raise money, sell so many goods and all this stuff. . . . I didn't even go to PTA. I mean, I may go once a year for a special [program]. . . . [T]hat's regretful that I wasn't involved any more in their education than I was. But . . . I really didn't have any reason to doubt what they were doin'. Or question. . . . You know, they came home with good grades. Isn't that enough? . . . I'm busy sewin' and takin' care of home. And . . . you get this attitude, "I won't bother them and . . .

> we'll get along fine." . . . I mean, . . . it's really bein' a passive parent and not really bein' as concerned as you should be in your duties as a parent.
>
> But, anyway, we just began to notice some things, and talkin to each other. And then . . . we talked about dress, that . . . we'd seen . . . that kids were wearin' see-through shirts and maybe wearin' . . . joggin shorts to class. And . . . especially wearin' . . . slogans . . . with curse words on 'em, on the T-shirts and things like that. And . . . we inquired, "Is there a policy for dress? Do you have any kind of dress code?" . . . And then the other thing was . . . that it had concerned us that they were takin' elementary school children [during a school trip] to places that served alcoholic beverages. You know, right at the time that they were there. . . . [T]hey had taken kids over to the pizza place that sold beers. They could go on, you know, maybe three or four hundred yards further and gone to McDonalds. . . . Our kids had to miss the trip rather than go with the class. Because they had to go to a place that was servin' beer out around the kids. . . . [Y]our older ones, you could maybe tolerate it better. . . . That was our first meeting. We were about thirteen. And . . . we discussed those types of things. (Frost Interview)

In the two weeks between the COBS meeting and that of the school board Mozert kept up his attack in the press. On Thursday, 6 October, he was the guest contributor for "Commentary" on the editorial page of the Kingsport Times-News. Under the sub-heading "Stamp Out Humanism" Mozert again criticized the Holt readers and, indirectly, the Hawkins County school system. At the end of the column he was identified as "director of Citizens Organized for Better Schools in Hawkins County." A week later, on the day of the school board meeting, the Rogersville Review printed another letter from Mozert. Again, he attacked the school board by

juxtaposing its members' apparent indifference toward local education with his and COBS' deep concern:

> The Tennessee School Boards Association held their annual district meeting on October 3, 1983 in Greeneville [about thirty miles from Rogersville].
>
> A major topic of discussion was Governor Alexander's Better Schools Program, a subject of national concern. As a member of COBS . . . I found the meeting to be most interesting and informative. It was surprisingly unfortunate that Hawkins County, as registered members, was the only school system not represented.
>
> Don't abandon your child's education to public officials. YOU need to get involved. Can we afford to take a nonchalant attitude with something as precious as our children--tomorrow's leaders?! ("Letters to the Editor: Not There," 13 Oct. 1983, A2; the same letter appeared in the Kingsport Times-News, 11 Oct. 1983, 8A)

At the board meeting on 13 October Mozert was limited to ten minutes for his presentation of COBS' concerns. The board minutes indicate simply that he raised four issues: "1. Moment of silence. 2. Pledge of allegiance to flag. 3. Dress code. 4. Exposing students to places that sell alcoholic beverages." There was no discussion about the Holt textbooks. The board took the points "under advisement" and a committee was formed to look into the matter (Official Minutes . . ., 13 Oct. 1983, 117).

The following day the Kingsport Times-News reported that

> the board indicated that it was largely in agreement with the group's points--"There's none of them (the four points) I don't think any member of this board doesn't agree with," said Chairman Harold Silvers Jr.,--although there was some

question about how extreme a dress code could be. (David Brooks, "Hawkins Group Focuses on Student Dress Code," 14 Oct. 1983, 8A)

Jim Sharp recalled that

> most of the board members were not against what they were proposing; they think the pledge to the flag well and good. Of the people we have on the board . . . at that time we had five members and all of 'em were veterans. They had no problem themselves with prayer or Bible reading. But in order to comply with the federal law, it couldn't be allowed.

## Problems for Accommodation

By mid-October there were indications that accommodation was failing to win the support of school administrators. The school system had never issued a clear-cut policy in response to the parents' complaints, and this, along with Mozert's confrontational tactics, contributed to the opposition. Speaking of the county's principals, Harold Osborn lamented that

> they couldn't get any directions. . . . Nobody would tell 'em what to do. And, frankly, . . . I think it would have been allowed to continue except for one thing. . . . Next time the school board met [on 13 October], they showed up again, and this time they had another list of demands. And this list of demands included a dress code for students and faculty, . . . mandatory salute to the flag every day, the mandatory moment of silence, just a whole bunch of your typical right-wing demands, see? And that was just a little too much. . . . [W]hat happened, it became obvious that what we had was not some local parents that was concerned with the textbooks and their children.

When asked how he felt about continued use of the alternate textbook, Osborn echoed the concerns and suspicions of Foster Payne:

> If it had continued as it was originally established with those families, no, I wouldn't have objected to it, because it would have been done very quietly. There would have been no inciting of other people to come up with all kinds of slights and things wrong. And if I'd thought that these people'd been sincere. . . . [W]e could accommodate these people, if that's all they wanted. If they just really didn't want their kids usin' these books, we could have taken care of 'em. But that's not how they wanted it. . . . [T]here's no doubt in my mind, and there's no doubt in the minds of the other people that were actively involved, that if they'd gotten what they wanted, the next step would have been another book, another book, another book.

One reason why no policy had been promulgated was that the superintendent was having second thoughts about accommodation. "Mr. Drinnon and I had talked about it a good deal," he conceded, "and [I] was already determining that it wasn't a good practice. And that the time was going to come when we were going to have to do something about it" (Snodgrass Deposition, 175).

The lack of policy became apparent when, on Monday, 10 October, three days before the monthly school board meeting, Vicki Frost wrote a letter to her daughter Sarah's second-grade teacher at Church Hill Elementary School. In it she requested that Sarah be permitted to use an Economy reader rather than the Holt text. Jean Price, the principal of the school, discussed the request with Snodgrass and assumed from the conversation that the decision was up to her (Jean

Price Deposition, 36). Although copies of the Economy book were available, although the Economy series "constituted the . . . approved alternate or approved supplemental books" (Snodgrass Deposition, 91), and although use of alternate texts was being permitted at the middle school at this time, Price concluded that, since the school board had adopted the Holt series, it was the policy of the board to use only that text (Price Deposition, 33). She explained that she would have been "insubordinate" to this policy if she had allowed the use of another book. But she acknowledged that she had not consulted any board member to confirm her opinion (Price Deposition, 42). Unlike Salley, then, Price was not attempting to build bridges between the two sides. And in her relations with Frost she was less than straightforward:

Q: You were . . . confronted with more than one request by Mrs. Frost, were you not, to have Sarah not read the Holt books?

A: Yes.

Q: Okay. Did you ever tell her no? . . .

A: I . . . don't think so. . . .

Q: . . . Mrs. Frost comes in to you and says, I'm paraphrasing, "I want Sarah to read a different book. I don't want her to read the Holt book. Will you allow her to do so?" What did you say?

A: I don't know that I ever gave her an answer. I don't know that she ever forced me to make a decision of that sort.

Q: So, you just sat there and didn't say anything?

A: I didn't make a decision.

Q: . . . Did you ever communicate anybody else's decision to Mrs. Frost?

A: Yes. . . . That probably that the Holt text was required by the school board.

Q: Okay. And did you say that to her from the first time she made the request, and repeated, in essence, that same information everytime she made the request?

A: When she made some requests . . . I didn't make a decision, you know. . . . She and I talked about it, but I don't know that a decision was required, other than the fact that the board had mandated the series to be used. . . .

Q: Should it have been obvious to Mrs. Frost, from what you told her, that Sarah was not going to get the . . . Economy book, and was going to have to read the Holt book?

A: I don't know whether it would have been at that point or not.

Q: Did any educational reason figure into your reasoning in what you communicated to her that the board policy required the Holt book to be used? . . .

A: Yes. . . . My reasoning would have been that the board required the Holt for all classroom students to read. You know, or to be in that series. . . . I didn't feel that I had the right to . . . make a decision otherwise. (Price Deposition, 51-55)

As a temporary solution to the impasse--and apparently with the knowledge of Price--Sarah's teacher furnished her with papers containing stories and comprehension questions on those stories, with the understanding "that the papers . . . would not have anything to do with the Holt, Rinehart, Winston Reading Series. And the papers that she was given to work were not offensive" (Vicki Frost Deposition, 2-3

April 1986, 205). Although Sarah was the only student to receive such consideration from her teacher, she remained in the classroom to work on the papers. This system lasted from about 11 October to 21 November (Vicki Frost Deposition, 2-3 April, 204-6).

At Carter's Valley Elementary School accommodation became the source of further controversy. Heather and Vicky Baker, granddaughters of Marion and Jennie Wilson, had moved from Bristol to Hawkins County with their parents and had enrolled at Carter's Valley on 3 October. The move came to be widely regarded by local residents as part of a design to foment trouble in the county's schools. Foster Payne reflected this suspicion in his comments about Jennie Wilson:

> She had grandchildren, whom she made . . . move to Hawkins County and became involved in this episode. And you know that she must've had an agenda to bring her grandchildren in and subject them to the risks of what was going on here. . . . I think it suggested that . . . her family was going to become involved in this crusade.

Jim Sharp held similar views. The textbook issue "would never have come up in Hawkins County," he felt,

> had it not been brought in from the outside. We were selected. Hawkins was selected. . . . [W]e had a lady [Rachel Baker] from Bristol to move into our system, who enrolled her children here. Carter's Valley Elementary School. . . . They came into our system after school began. . . . So I say that the problem started in Bristol, was brought into Hawkins County. They found them a person who would put the foot forward in Vicki Frost. They trained her and carried on from there.

From the Bakers point of view, at least, there were perhaps less sinister reasons for moving to Hawkins County at that time. Although James Baker had worked in Kingsport since 1974 (James F. Baker, Jr., Deposition, 19), the family had been living in Bristol, some twenty miles away. To move to the upper end of Hawkins County would bring him much closer to his place of employment. Rachel Baker explained that they had purchased a lot for "a fair price" on which they could relocate their mobile home (Rachel Baker Deposition, 55). And a move at this juncture might seem less threatening to anyone opposed to the textbooks, since the accommodation granted at the middle school suggested a precedent for other schools to follow.

Two weeks later, however, when the Bakers and Wilsons tried to get an alternate text for Heather, who was in the second grade they were sharply rebuffed by the principal, Archie McMillian.

Rachel Baker describe the encounter:

> [T]he morning of the 17th my husband and I wrote a letter to Mr. McMillan and . . . we told Mr. McMillan that we did not want Heather continuing in the Holt series People Need People. If he had any questions if he could contact my Mom or Dad [sic]. My husband and I were both working at the time. . . . [W]hen he received the note, he called my mother and told her that Heather would continue in the books and my mother told him that it was our wishes that she did not and that that's what we had put in the letter and . . . from what she has told us, she offered to go up to the school, bring another reading series, or something along that line and go through the reading with Heather separately. And he said, no[,] that Heather would read the series. There would be no

> exceptions. And my mother explained to him that that was not an alternative and he said then . . . come pick her up and have her educated elsewhere. And so my father . . . drove down to the school and both my children were sitting in the office. My younger daughter was not in the Holt series . . . and my father explained to me that when he got there he asked Mr. McMillan, "Why is Vickie in the office?" and he said, "Well, she'll have to read the series next year so you might as well take her, too. (Rachel Baker Deposition, 76-77)

McMillan explained that he

> didn't suggest any alternatives, because at the time the controversy had already been established at the middle school, and I was verbally suggested or told to leave all kids in the reading series. . . . I communicated with Bill [Snodgrass], and Bill suggested that . . . we leave all kids in the Holt, Rinehart, Winston reading series. (McMillan Deposition, 19-20)

McMillan was asked if his awareness that Salley had provided an alternative at the middle school ever prompted "any thoughts in your mind that, "Hey, maybe this might be an approach. I might be able to give . . ."

> A: No. No, I . . . wouldn't have done it anyway.
>
> Q: Why wouldn't you have done it anyway?
>
> A: Because of the complications that it caused. I didn't have the extra personnel. The amount of extra labor that it would take on the teacher's time, as well as the isolation factor of the kids. . . . (McMillan Deposition, 47-48)

Although the Bakers joined the other parents a month and a half later in filing suit against the Hawkins County school system, their children were, from this time on, enrolled in a private Christian school.

Organizing a School Countermovement

From the county's perspective, what had begun in late August as a protest by one parent against the Holt books had, by mid-October, spread to several parents and four schools and embraced a number of other complaints against the system. These events occurred just as the schools were attempting to introduce a new reading program and inaugurate the state's Basic Skills First concept. Feeling threatened and besieged and seriously overestimating the strength and organization of their opposition, the school system sought outside support. School telephone records indicate that on Wednesday morning, 19 October, and again on Friday, 21 October, calls were placed to People for the American Way in Washington, DC.

"They sent me that book [Protecting the Freedom to Learn: A Citizen's Guide by Barbara Parker and Stephanie Weiss; supra 83] immediately after I called," Foster Payne explained. "Then they followed up with a call. And then their relationship developed, early through me and then later on through these other groups."[32]

Armed with this manual, the school system began to develop an aggressive response to the perceived threat of the parents. Payne recalled that he "made ten copies of

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[32]Payne was referring here primarily to the local PTA and to CARE (Citizens Advocating the Right to Education), a school-support organization formed a short time later (infra 219-20).

that book. I quickly called and asked them if I could do it, because I knew I'd need to have them quickly. . . ."

Payne felt that the book

> built up a mentality, and you could see many parallels, . . . what was described in that book and what was happening here. . . . [Y]ou couldn't just go to somebody and say, "This is a bunch of . . ."--whatever you want to say they are--"We'd better head this off." I mean, you couldn't ever get the feeling. But if you let people read. . . . So I gave it to several of the most vocal people that I could think of, and the ones who'd be apt to take this on themselves. . . . I've forgotten who all I gave [copies of the book to], but I had this thing in mind all the time. . . . [J]ust the way the book said it. Somewhere in there it says the best way to do that is to form a countermovement.

The arrival of the book, its distribution to "vocal people," and its focus on organizing support within the community--on building "up a mentality"--heralded the approach of a much more hard-line response than accommodation. Following the book's guidelines for "Coalition Building," "Letter Writing," "Circulating Petitions," "Working with the Media," "Educating the Public," and "Using People for the American Way's Resources" would mean not only attempting to enlist community support for the schools but also to isolate the protesting families by drawing social boundaries based on behaviors considered to be outside local norms.

In the meantime Mozert continued his pressure on school officials. On 19 October he wrote to school board chairman Harold Silvers requesting essentially the same information

he had sought from Snodgrass on 23 September. Apparently Mozert was not satisfied with the response Snodgrass had provided ten days later, including the statement that "in reference to the academic rating, there are no comparable ratings between states or counties as most systems use different tests"[33] (Copy provided to the author by Vicki Frost). On 21 October Mozert again wrote to Snodgrass, requesting such information as "a copy of the school budget with a breakdown of the miscellaneous accounts," "a copy of the written dress code for Hawkins County," the system's policy "on the pledge of allegiance to the flag," the number of classrooms in the county without American flags, and whether COBS would "be given an opportunity to serve on the textbook selection committee" (Copy provided to the author by Vicki Frost).

Accommodation Rescinded

School officials met with Holt representatives in Kingsport on Monday evening, 24 October, and COBS held its second meeting the following night, but the next major event was the school board meeting on Thursday, 10 November. Board minutes reveal that a large portion of the session was devoted to responding to issues raised by Mozert, Frost, and Wilson. Near the end of the meeting, board member Bob McKee

[33]Compare Snodgrass's statement here to his claims in his speech at Church Hill Elementary School on 5 December 1983 (infra 224).

made a motion "that teachers will use only textbooks adopted by the board of education as regular classroom textbooks" (Official Minutes . . ., 10 Nov. 1983, 133). The measure, which passed unanimously, meant that children of the protesting parents would no longer be permitted to use alternate textbooks. If the families were to continue to enjoy use of the county's public schools, then the children would have to use the Holt readers. Considered from another perspective, the action also signified the board's endorsement of a uniform approach to the school curriculum.

Bob Mozert described the board's action:

> [I]t was about a quarter till eleven, eleven o'clock, something like that, Bob McKee then said in the school board meeting that it had come to his attention that all of the students were not using these same readers. And it was as though they had it planned out already ahead of time, and all of them knew what they were going to say and agreed. And . . . he made a motion that all of them be required to be in the same readers, the Holt, Rinehart, Winston readers. And of course, the school board unanimously agreed. . . ." (Mozert Interview)

When asked why the board should have suddenly rescinded the alternate reader option, Mozert explained,

> I think they felt challenged, because they'd never been challenged before by parents. Parents had always minded their manners and been members of PTA . . . and things like that, that kind of participation. But they'd never been invited to . . . nor had they participated in the curriculum of the school. Then we began to participate . . . and find out . . . it was totally against our Christian heritage, and we began to register our objections to it. They'd never been confronted with a new situation, and a new environment totally, one that probably threatened their status quo. I can understand how they responded in the

way they did. I don't agree with it, but I can understand it. (Mozert Interview)

McKee, who in 1983 was in his twelfth year on the board and held a quality control position in a local firm, explained that his principal reason for making the motion was "split grades." "When you divide a class up," he said, "it takes time away from each group. . . . You would have time taken away from each one of those groups when they should be all on the same level, reading in the same book. . . ." On the other hand, he believed that using the same book provided for "uniformity. Makes it more businesslike, where the students can all learn and be tested on the same basis" (McKee Deposition, 21, 29).

McKee was asked if there had "been any discussion that you are aware of among board members or the school officials to see if there was any way to accommodate the parents' concerns?"

A: Not as I know of. . . .

Q: . . . [D]id you decide on your own to do this or was it in consultation with anyone else to make the motion?

A: Put it this way. After looking at the situation of two to three different reading books or textbooks in a classroom, after studying it, I decided that it would cause too much problem in a classroom to have more than one textbook.

Q: What did you do to study this situation?

A: Sit down and think about it.

Q: Did you . . . ever hear anyone say something to the effect that there were students using

alternative readers at Church Hill Middle School? . . .

A: . . . If I had heard it, I don't recall it. (McKee Deposition, 22-23)

In board member Doug Cloud's opinion, the action was

something that had been building, and . . . I did not know before this meeting that this vote would be taken . . . that particular night, but I thought that it would clarify our stand . . . that we backed this series and that we intended to use it. . . . But I think . . . the basic reason I voted for the motion was . . . uniformity in the books. . . . I think at this meeting I was first made aware that . . . at the middle school some children were being allowed an alternative reader. . . . And had I had prior knowledge of that, I would not have . . . gone along with it. . . . I think that's just opening a door for more problems, and it creates hardships on the teachers. We don't have space for separation and things like that. I mean under the Better Schools Program that the governor has incorporated, our Holt series is part of that . . . and if you have kids in alternative books, then if tests come up . . . they are not in the mainstream, and how are they going to compete? How are they going to . . . stay up with the class? It just creates a lot of problems that I don't think are necessary. (Cloud Deposition, 20-22)

Like McKee and Cloud, Conley Bailey defended his vote by the perceived need for uniformity: "I think anything outside of a uniform textbook would put burdens on the teachers and the schools and the other students in the class" (Bailey Deposition, 33). Also like McKee and Cloud, Bailey apparently did not know that some of the protesting families' children were being granted alternative readers:

Q: Between the September school board meeting and the November school board meeting, did you hear anything about any of the students .

. . in Hawkins County being allowed to use an alternative reader?

A: Not that I recall, no. (Bailey Deposition, 36)

Jim Sharp, a strong supporter of the school system throughout the controversy, nonetheless felt that the superintendent was largely to blame for this turn of events and the road the schools had chosen to take. "Before the board made the statement and took the final stand and confirmed that we would use 'em," Sharp explained,

> we had some principals who, on their own, allowed to use an alternate textbook. After the thing began to snowball and some of the principals wouldn't use the textbook, the board had to make a decision. So the board said, "Yes, we'll use this. This'll be it. No alternative textbook." This was poor leadership on the superintendent's . . . part. . . . If the . . . superintendent had gone to the board and said, "Listen. I want to try to meet with the parents involved and work this situation out," then I think . . . after meeting with them, he could have worked with them, he could have gone back to the board and said, "Now, this is the way that I would recommend this be, that we work in this direction," then it'd all been settled. But he didn't do that. He just . . . stood with the board and said, "No. Use one textbook and that's it."

Snodgrass, the superintendent, maintained that he had played no role in the board's action and did not know what had contributed to its decision (Snodgrass Deposition, 172, 174). When asked why he and Drinnon had begun to believe that the use of the alternative readers "wasn't a good practice" (supra 182), he explained,

A: Well, as I recall it, we were of the opinion that no instruction was . . . taking place. The children weren't being tested, test

scores were not being recorded. And that they were just going to the library to do free reading with no supervision, no one there especially assigned to supervise them. And those were some of the main reasons why we thought it wasn't a good practice.

Q: . . . Did you explore any alternatives to the . . . two, ends of the spectrum? . . . And, there were other things in the middle that you could have done like . . . have somebody work with them a little or . . . have the teachers help them out some. Did you have them tested periodically?

A: I don't remember. I don't remember about that. . . .

Q: . . . [I]s it your recollection that you or Mr. Drinnon talked to the children's teachers?

A: I did not. I don't know . . . whether Mr. Drinnon did or not.

Q: . . . Did you . . . take the children aside and . . . have anyone make a professional evaluation of their reading skills before you terminated the alternative program?

A: Now, that I don't recall. . . .

Q: So, the kids could have been learning just jim-dandy, but you just didn't know?

A: As I recall it, I didn't. That's right. . . .

Q: But regardless of what information you and Mr. Drinnon had, to the best of your knowledge, that information was never communicated to the school board?

A: Not that I know about. Personally know about. (Snodgrass Deposition, 175-77)

At an Impasse

Nothing happened until the following Monday. Frost advised Marty's and Rebecca's reading teachers at the middle

school that she had directed her children not to use the Holt series. She explained that she did not want the teachers to punish them for obeying their mother's directions. According to Frost, "Marty came home from school and related that his teacher said that he would have to read the book, that Mr. Salley had given her word. . . ." (Vicki Frost Deposition, 2-3 April 1986, 210-12, 217).

That afternoon several of the parents, along with Kingsport attorney Les Bailey, met with Salley and Drinnon at the middle school. Mozert explained that

> together, we did exercise wisdom and retain legal counsel. . . . Well, the first time he went down with us, several of the parents, down to the middle school . . . and tried to reason in logic with them . . . to allow us the accommodation of a reader. They refused. It, of course, was out of Mr. Salley's hands anyway. He was being told what to do. I think it was pretty . . . evident there. So that really didn't come to much avail, even though Mr. Bailey presented a very strong argument in our favor. I think he just talked to the wrong person. Even if he were talking to the right person, I don't know if it would have had any effect anyway. (Mozert Interview)

Sandra Couch revealed that it was at this meeting "where I first met Vicki Frost." She recalled that

> someone there in the group asked what would happen to the children, what would they do if we did not allow the children back in the reading class, and they said they didn't know, but there was some assurance made that they would not be suspended. . . . I believe Mr. Drinnon said something like, "No, . . . I don't think you have to worry about that" or something like that. And at one point, I asked Mr. Drinnon, I said, "You're asking us to do something that violates our conscience, and what choice are you going to give us?", and he just looked at me and shrugged his shoulders and didn't make a verbal response to that. . . . When we

> left, we didn't know what they would do. They really hadn't told us any specifics about exactly what would happen the next day if the children wouldn't go back in the reading books or the reading classes. (Sandra Couch Deposition, 37-40)

Sandra Couch and school board member Doug Cloud had grown up together, gone to school together, and been friends for many years before the controversy began. In her deposition she recalled a conversation which she had had with him, possibly later that evening after the meeting:

> I asked him . . . if it was a fact that he had said the School Board could not enforce a dress code because it would violate the rights of the students, and he said yes, that was true. And I asked him, then, . . . what about the rights of our children, and he said that he had to consider the rights of--what he considered good for all eight thousand students in the Hawkins County System, and . . . they just could not allow these handful of parents to continue to stir up trouble. . . . When I asked him about the rights of our children, his answer was always [to] refer to the troublemakers. And so I asked him, . . . "So this action was taken to deal with us troublemakers?" and he said, "I did not call you a troublemaker," and I said, "Well, . . . you might as well include us in that group because we are asking that our children not be required to read the books, and if that makes a troublemaker, I guess we're troublemakers." . . . [A]nd I asked him what choice did we have. I told him that he was . . . asking us to do something that would violate our conscience, and what choice was he going to give us, and he said as far as he could see, the only choice that we had was to either put the children

back in the books or put them elsewhere.[34] (Sandra Couch Deposition, 39-43)

The next day Billy Couch, Brad Eaton, Marty Frost, Rebecca Frost, Gina Marshall, Travis Mozert, and Steve Whitaker were suspended from Church Hill Middle School for three days when they "refused (or their parents refused for them) to attend reading class or to read the Holt book or both." The following Tuesday, 22 November, they were suspended for ten additional days for the same reason (Amended Joint Stipulation . . . 19-20). Jay Salley, who assigned the suspensions, later said that he "felt . . . if I didn't do something . . . that . . . I'd be . . . in

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[34]During this conversation between Cloud and Couch another consideration surfaced which may have been in the minds of some board members. According to Sandra Couch, Cloud

> said that . . . the ACLU was just looking for an excuse to take what little bit of Bible study was left in Hawkins County out, and if we continued with this, we would give them just the excuse they were looking for. (Sandra Couch Deposition, 39)

This concern of Cloud appears to have been well founded. On 26 October the Kingsport Times-News had carried a front-page article which reported that

> the American Civil Liberties Union says it will file a lawsuit next month against "an East Tennessee school district" for conducting Bible classes in public school classrooms, and at least two area districts consider themselves possible targets.

The article went on to cite Hawkins County as one of the two school districts and quoted Superintendent Bill Snodgrass:

> "We've got some [Bible instruction]. . . . We've just been playing it by ear. We're not forcing any children to take the classes, and we've had no complaints." (Tom Matthews, "ALCU Planning Another Bible Class Suit," 26 Oct. 1983, 1A)

insubordination" to the school board (Salley Deposition, 23).

During the suspensions the parents continued to press for accommodation for their views. On 15 November Mozert sent the first in a series of more than a dozen letters to various school officials. Similar in content to the others, this letter read in part:

> We are still attempting to reach an acceptable solution. As we stated, our children shall not be permitted to read nor be exposed to hearing, what we find to be objectionable material in the Holt, Rinehart and Winston readers. This is a conscientious objection based upon the premise that it violates our exercise of religious freedom. It is opposed to our constitutional rights under the First Amendment.
>
> Our children were previously given the accommodation through the use of an acceptable and authorized substitute reader. We only ask that our children be reinstated [in] these substitute readers. To avoid any hardship on the teachers, the parents have even suggested that they would be willing to hire an approved tutor.
>
> Should our children be expelled and/or suspended from school for this reason, we see this as a denial to our right to a public education.
>
> Please let us reason together. (Exhibits No. 53 and 54, Mozert Trial Files)

Six days later the Frosts sent a letter to Jay Salley and to Marty and Rebecca's reading teachers:

> Because of the dictates of conscience, Marty and Rebecca Frost will not participate in the Holt Basic Reader reading classes. . . .
>
> Provision (private tutors funded by the parents) has been offered for the effective continuence [sic] of our children's basic reading skills. Absence from the class can be

accommodated by parent volunteer supervision, if necessary.

We love our children and sincerely hope that a positive atmosphere of cooperation can be achieved for the children's sake. (Salley Deposition, Exhibit No. 1)

Frost later explained that

during the time that the children were from the regular reading class that the parents would be willing to come to the school and to sit with the children in the library to offer their supervision, and then possibly hire a tutor, one that would be approved by the School Board, and to pay for that tutor, and to have the children maybe tutored in a group . . . maybe after school, or sometime. (Vicki Frost Deposition, 15-16 April 1986, 366)

Clearly, the parents were still trying to resist the only two options that school officials were offering--returning their children to county schools and using the Holt books or enrolling them in private school--and were searching for some solution which would permit them to continue to use the public schools without exposure to the Holt readers. Mozert outlined three alternatives which would have been acceptable to the parents: excusing the children from reading class and permitting them to work alone in a substitute reader; employing a tutor approved by the school system and the parents and paid for by the parents; or teaching reading to the children at home. Each of these alternatives was premised on the use of a textbook that would meet the approval of both the school system and the parents. (Bob Mozert Deposition, 215-18).

Frost's Arrest

The parents' efforts were quickly overtaken by events. With Frost's two oldest children now suspended and at home, her concern shifted to her daughter Sarah at Church Hill Elementary School. On Saturday, 19 November, she called Jean Price, the principal. Price had been with the Hawkins County school system since the fall of 1966 and, like Salley, had been appointed to her present position during restructuring of the county schools in 1979.[35] Frost offered this description of the individual who, perhaps more than any other involved in the controversy, became her nemesis: "She's a very quiet person. I mean, even in all these doin's, I never seen her raise her voice, never saw her angry with me. It's just not her manner. . . . [S]he's just very businesslike, very dignified" (Frost Interview).

The purpose of Frost's call was to seek permission to take Sarah out of the classroom the following Monday during reading period.[36] According to Frost, "Miss Price told me

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[35]Four years after the controversy began, Price resigned her position and moved with her husband to Dallas, Texas. The school board was reported to have accepted her resignation "with regret" and praised her "for her behavior and control during the recent conflict between the school board and fundamentalist families that erupted at the elementary school and other schools" (Betty Kauffman, "School Principal Resigns," Citizen Tribune (Morristown, TN) 15 Feb. 1987, A3).

[36]According to a previous arrangement Frost's daughter Sarah had been given separately prepared papers rather than the Holt textbook for her reading materials. She had, however, remained in the room during class discussion (supra 185).

if Sarah were not in class six-and-a-half hours, that I would face truancy charges and that I would be brought before a judge" (Frost Record of Trial, 22 Jan. 1986, A29).

Price testified later in court that she said nothing to Frost about the possibility of losing Sarah if she removed her from class or of being arrested as a result of such action. "But I would have told her," she said,

> that if her child was out of school for five days or more, unexcused absence, then I would have to report her . . . or report the child to the attendance supervisor with the number of days they've been out. (Frost Record of Trial, 25 March, 1986, F46)

This phone call against the background of the board edict and the middle school suspensions, set the stage for perhaps the most controversial incident in the community phase of the conflict, an event marked by accusations and denials, charges and countercharges, on both sides.

From what transpired during the next three school days, it seems clear that Frost's actions were guided by two overriding concerns: she did not want Sarah using the Holt series or being in class when selections from the readers were being read and discussed; and she wanted to avoid any action which could be interpreted as contributing to Sarah's truancy. As Frost understood it, this meant that if she took Sarah out of class during reading, they must remain in the school building or on the school grounds (Frost Record of Trial, 22 Jan. 1986, A31). In her deposition, she explained that "when I talk about truancy I'm talking about

threat of possibly--I had the conception that Sarah could have been taken away from me" (Vicki Frost Deposition, 15-16 April 1986, 378).

When she went to school the following Monday to remove Sarah from reading class, she found Price, Drinnon, and Cloud "waiting in a kinda conference for me" (Vicki Frost Deposition, 15-16 April 1986, 374). During the meeting Price advised that "if Sarah did not read the [Holt] book, she would automatically fail the second grade." Frost countered by offering to hire a tutor for Sarah or to work with Sarah in the school cafeteria, library, "or just wherever they let me take her, 'cuz I didn't want to be truant." Cloud asked why she didn't enroll her children in a church-sponsored school, and Frost replied that she didn't have the money (Frost Record of Trial, 22 Jan. 1986, A34-A35). There was no reaction from the group to her offer. According to Frost, Price simply repeated that if Sarah were taken out of class, she would "automatically fail" (Frost Deposition, 15-16 April 1986, 376). In subsequent testimony Price repeated the need for uniformity and for meeting the Basic Skills requirements as reasons why Frost's offers were unacceptable (Frost Record of Trial, 25 March 1986, F44-F45).

The next day Frost reappeared at school and again asked for permission to take her daughter to the cafeteria to

teach her reading during the class reading period.

According to Price,

> [W]e had a conversation, again with discussion of the rules, and that she could not teach reading in the cafeteria, that she must leave. She indicated to me that I'd have to call the police, and her and Sarah will go sit in jail. (Frost Record of Trial, 25 March 1986, F48)

In her testimony Frost denied making such a comment (Frost Record of Trial, 22 Jan. 1986, A27). Price went on to explain that Frost

> did leave the office and went to her vehicle [with Sarah], and I don't know how many minutes of pondering I did . . . but anyway I called Mr. Snodgrass . . . and told him what had transpired to this point. And he advised my . . . calling the police and asking them to come to the school to ask Mrs. Frost to leave. And I did call, and Mr. Ashbrook, who was the policeman, came, and of course when he came I explained to him the different things I had talked about to Mrs. Frost. (Frost Record of Trial, 25 March 1986, F48)

One of the topics the two discussed was a section of the Tennessee Code, 49-818, which dealt with "persons improperly on school premises."[37] Price believed it was necessary to

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[37]Section 49-818 of the Tennessee Code stated:

> Persons improperly on school premises.--(a) In order to maintain the conditions and atmosphere suitable for learning, no person shall enter onto the grounds or into the buildings of public schools during the hours of student instruction except students assigned to that school, the staff of the school, parents of students, and other persons with lawful and valid business on the school premises.
>
> (b) Any person improperly on the premises of a school shall depart on the request of the school principal or other authorized person.

inform Officer Ashbrook of the contents of this statute "so he'd know I had asked her to leave and . . . what gave me grounds for asking her to leave," but she added that she "certainly did not intend to have her arrested and would never have her arrested" (Frost Record of Trial, 25 March 1986, F49).

Under cross-examination Price acknowledged that she had shown a copy of the law to the attorney for Hawkins County the previous evening and had received from him the judgment that "it looked like a good statute." She did this, she explained, because she

> felt with all the publicity and things that had been going on at the middle school, it was not unusual to turn the TV on and see . . . a reporter on camera in the middle school, and my faculty was getting kind of edgy, . . . and I really needed to know if I had . . . the authority to say to a group of reporters or whoever, did I have a right to ask them to leave the premises. . . . (Frost Record of Trial, 25 March 1986, F79-F81)

A few minutes after Ashbrook arrived at the school, he directed Frost, who was in her vehicle with Sarah in the parking lot, to leave the school grounds. Just before departing, Frost sent a note to Price via Ashbrook, advising that she would return the next morning "to take Sarah out of the Holt Reading Class, without disturbing the classroom or

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(c) Violation of this section shall be a misdemeanor and punished as such.

entering it."[38] According to Frost, the purpose of the note was to try

> to keep ahead so they'd know what I was doin' and what my intentions were. You know, tryin' to explain to 'em. I always wanted to be there announced. . . . [M]y thinking was that if they know what I'm gonna do and why I'm there . . ., then they'll act rationally and people won't be faced with a situation where they'll act out of emotion. (Frost Interview)

But feeling that the situation had been "kinda threatening," Frost, upon the advice of a friend, called Concerned Women for America that afternoon.[39] "I talked to Mike Farris [CWA's general legal counsel]," Frost recalled,

> and I told him what had happened, and he was appalled. . . . But, anyway, I told him about goin' to the school and the officer . . . askin' me to leave. . . . He called Bill Snodgrass and told him to let me get my child. And Mr. Snodgrass said "We'll not arrest her if she leaves." (Frost Interview)

The following day, which was the day before Thanksgiving, Frost went to school with the intention of getting Sarah and leaving. "But I could not leave those school grounds," she explained,

> until I had an officer or someone in authority that could tell the juvenile judge that I just wasn't comin' in there, takin' her out of class, goin' home, and comin' back ever' day. That I was actually gonna be . . . told by the school principal that I couldn't stay on the school grounds and that I had to leave. That had to be

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[38]A copy of this note was provided to the author by Vicki Frost. It bore the inscription, "Mrs. Frost ask Mr. Ashbrook, Policeman to give to me. Rec 11/22/83 J. Price."

[39]Frost's telephone bill for November 1983 indicates that such a call was made during the afternoon of the 22nd.

> established that I wasn't just voluntarily doin' that, that I was bein' required to do it. Because I did fear stiff punishment by the judge, even to the point where I could have my child taken away. And so that's why that I called . . . the [police] officer the night before. . . . I . . . asked 'em if I could have an escort . . . have someone there at the school. . . . And so, . . . to make sure that I had somebody go with me, I even went by the police station before I even went to the school. (Frost Interview)

Arriving at the school before the police officer, Frost went to the office and then to Sarah's room. She found that "they were makin' Thanksgivin' decorations, and so, you know, no reason to take her out of that. . . . [T]he teacher said, "Well, in about twenty minutes we'll be havin' reading." As a result, Frost returned to the school office. She recalled that, when officer Ashbrook appeared a short time later, he was greeted by Price,

> "Well, hello Joe. Are you visiting today? Or do you have business here?" And he said, "Yeah. Yeah." And it was almost as if he was answerin' the first part, like he was visitin'. . . . I said, "No, I called you here. I want you to be a witness." He . . . made some kind of a negative . . ., "Nawww." (Frost Interview)

Frost then asked for permission to act as a parent volunteer in order to assist her daughter in the library or cafeteria during reading period. But Price

> looked up at me and she said, "You're here unlawfully." . . . And she said "You're here to take your child out of a class that the school board says she must attend." And I said, "I don't feel that's bein' unlawful.". . . She picked up . . . and read the statute. And it talked about who could be on school grounds--parents, students, teachers, administrators, staff, obvious people . . . that were allowed. Then they had a section about people with invalid or unlawful business to

be asked to leave. . . . [I]f they fail to leave upon the principal's request, they could be arrested for a misdemeanor. (Frost Interview)

Price made two copies of the statute and gave them to Ashbrook. According to Frost, about the time he finished reading the material, she repeated,

> "Well, I don't feel I'm here unlawfully." And then that was it. . . . And Mr. Ashbrook . . . said, "Miss Frost, . . . I place you under arrest." And at that time . . . it was just a natural reaction for me, I just said, "Praise the Lord. It's all right if you wanta arrest me. But," I said, "I'm getting my daughter." . . . 'Cause at that point in time it was as if they had taken her from me and they had custody of her from me. Even if they had custody of her until the end of school, they had taken that much of my right to have custody of her whenever I wanted her. . . . And so, I just took off walkin'. . . . We were in the principal's office and the door was shut. . . . But, anyway, when I got about two steps outside the door, then he grabbed me by the arm and said, "It's you goin' to jail, not your daughter." It wasn't that I wanted my daughter in jail. But it was just at that time my security as parent felt threatened. . . . I wanted her with me. She was <u>mine</u>, you know. Don't keep me from her. (Frost Interview)

Frost was then taken from Church Hill to Rogersville, where she was jailed for about two-and-a-half hours before being released on her own recognizance and being admonished to "stay away from the school until this matter came up and was disposed of" (Frost Interview; Frost Record of Trial, 29 Jan. 1986, E149).

Price was asked what she felt Frost had "done that caused her to cross over the line from lawful to unlawful":

> A: Well, she was saying she would not leave, she would not check Sarah out, . . . and for her

to go to the cafeteria and teach reading, or to the library, would have been unlawful.

Q: But she was not in the cafeteria and she was not teaching reading when you told her that, was she?

A: No. . . .

Q: Was there anything else that she did which caused you to advise her that she was then unlawful . . .?

A: She kept arguing with me or back and forth, you know, like parent volunteer, and all these things that she, you know, I'd have to have him, and she nodded to the policeman, to have him arrest her, and of course I had no intention of having her arrested.

Q: But my question is, what did she do that made her unlawful . . .?

A: She refused to leave. . . .

Q: . . . [I]f you will think back to the 23rd, was the fact that she was arguing with you the motivating thing that caused you to tell her that she was unlawful?

A: No. I think the fact that she was going to get Sarah and go to the cafeteria.

Q: But she had not done that yet, had she?

A: No, she had not physically went and got Sarah and went to the cafeteria. (Frost Record of Trial, 25 March 1986, F76-F77).

School supporter Harold Osborn felt that

> Vicki Frost should never have been arrested. . . . [B]ecause Hawkins County played right into their hands. They gave them a weapon that they have beaten us over the head with from hill and dale, from Maine to California. And they really make it sound horrible. This poor defenseless mother. . . .

According to Osborn, as soon as he heard of Frost's arrest, he advised the general sessions judge, "The one thing you

don't do is let her stay down there [in jail] tonight. You get her out of here if I have to post her bond."

In stating that "Hawkins County played right into their hands," Osborn resurfaced an issue that had dominated local opinion: that the parents, acting as a group, or that Vicki Frost, acting alone in behalf of the parents' cause, engineered the arrest. Lester Sills echoed this suspicion. "But I think that they far overdid it," he said,

> when they went up there and caused that incident at school. And I think they caused that. . . . 'Cause that police chief, I know him. He's a nice guy. He's a real nice guy. Joe Ashbrook. . . . [A]nd the way she went about it, the more that he just felt like, "Well, if that's what you want, young lady, you're gonna get it. I'll just arrest you." And I kinda feel . . . that she was not upset about bein' arrested.

Did Frost, then, plan her own arrest? Local residents point to a number of factors, chief among which are her personal efforts to have an officer present at the school on Wednesday morning and her apparently pleased response to the arrest as evidence that the incident was a publicity maneuver designed to embarrass the school system and the county. Contrary to this are Frost's expressed concerns about truancy, her perceived need to have an officer present to witness that she was being told by someone in authority that she could not remain on school grounds with her daughter, and her countenance, which appears to remain cheerful, even under stress, a condition she would attribute to her faith. Moreover, her two oldest children had just

been suspended for ten additional days on the day before her arrest. Considering that her husband was working, two of her children were at home, her other two children would be arriving home from school in a few hours, and Thanksgiving with all of its preparations was the following day, it is questionable whether she would shed the responsibilities she repeatedly expressed toward her family for the sake of a tactic with such an unpredictable outcome.

On the other hand, Price and Snodgrass had been setting the stage for the events of that Wednesday: Price by attempting to ascertain her statutory authority regarding persons on the school grounds and by advising Officer Ashbrook of this authority once she felt secure in it; and Snodgrass by suggesting the previous day that the police be called to remove Frost from the school premises. As a result, Ashbrook knew when he came to school on Wednesday morning that Price apparently had authority to tell Frost to leave, that Frost had been asked to leave the school grounds the day before, and that both Price and Snodgrass did not want Frost to remain on the premises. Finding himself in no-man's land in the heat of the battle, Ashbrook had to make a decision. He was questioned about this during Vicki Frost's preliminary hearing on 9 December 1983 in Rogersville:

> Q: Now, Officer, are you telling us that you arrested Mrs. Frost because she argued with the school Principal?

A: I'm saying that she was arrested because she was disrupting a normal school day.

Q: Alright, sir. Would you tell us in what way she was disrupting a normal school day?

A: By taking up the time of the Principal, by arguing with the Principal, by being there. . . .

Q: Did she ever turn to you and tell you she wasn't going to leave?

A: Well, after I asked her to leave, you know--

Q: --But she didn't directly tell you, because Mrs. Price had already said, "You're here unlawfully." Is that right?

A: Uh-huh. (Yes)

Q: And you acted without undue delay and quickly arrested her. Is that right?

A: Well, . . . I rushed because she was, in my opinion . . . disrupting the normal activities, taking up the time . . . after you go into a place and do your business, it's time to leave. (Transcript of Evidence for Preliminary Hearing, State of Tennessee v. Vicki Frost, Case No. 61862, 9 Dec. 1983, 27, 32)

With the arrest of Vicki Frost, whatever opportunities might have existed within this community phase of the controversy for realizing some form of accommodation were foreclosed. Equally significant, while the school system had been receiving assistance from People for the American Way since mid-October, another national organization, Concerned Women for America, now brought its resources in on the side of the parents.

A Polarized Community

On Friday, 2 December, nine days after Frost had been arrested, eleven sets of parents, represented by CWA legal counsel, filed suit in federal district court in nearby Greeneville, Tennessee, "seeking injunctive relief and money damages for the alleged violation of the plaintiffs' First Amendment right to the free exercise of religion" (Mozert v. Hawkins County Public Schools, 647 F.Supp. 1195 [1986]). The injunctive relief sought by the parents was both temporary and permanent. They asked that the defendants be prohibited from

> compelling the student plaintiffs from reading the Holt Basic Readers; and taking adverse action against said plaintiffs for their refusal to read said books, including but not limited to any further suspension from school and the giving of adverse grades for the work missed as a result of said suspension.

Defendants included Hawkins County Public Schools, the Hawkins County School Board, individually and as a body, Superintendent Bill Snodgrass, and principals Jean Price, Archie McMillan, Quentin Dykes, and James Salley (Complaint for Preliminary and Permanent Injunctive Relief and for Damages for Violation of Federal Civil Rights, 2 Dec. 1983, 10, Mozert Trial Files).

In the meantime Jean Price had written a letter which appeared in the Kingsport Times-News on Friday, 25 November, the day after Thanksgiving. It is significant for at least three reasons. First, three of the letter's four paragraphs

were taken nearly verbatim from the PAW manual which Foster Payne had distributed about a month before, thus indicating that people were studying and beginning to apply its recommendations. Second, the letter was written in an "us-versus-them" style, attempting to estrange the protesting families from the rest of the community by intimating that their values were not local values and that they were trying to impose their will on the entire community. And third, the parents' goal for alternative books was recast as an effort at censorship, a theme the principal of Carter's Valley Elementary School had expressed in another letter about three weeks previously (supra, 139).

Price's letter read as follows (underlined portions were taken from PAW's Protecting the Freedom to Learn):

> I feel that the Citizens Organized for Better Schools (COBS) who are trying to remove reading books from our classroom have every right to state their opinions; in fact we welcome their doing so. Parental input is an important part of quality public education. But let's not confuse local control with vocal control. We don't want a small minority--no matter how loud--dictating what all of our children learn, or don't learn.
>
> I feel this is not just an isolated incident happening here in Hawkins County. It's part of a national anti-public education movement that would like to indoctrinate students to its narrow religious and philosophical point of view.
>
> While we're all concerned about this textbook, we should remember that this is not just an issue of censorship. It's an issue of our children's right to learn in public, tax-supported schools. The censorship movement is really an organized all-out attack against public schools.

> It is apparent that the censorship attack is beginning to have damaging effects on students as well as teachers. We must now have parents, teachers, board members, students, and administrators working together to preserve the freedom to learn. Citizens must be willing to take action to preserve freedom for themselves and others. ("Letters to the Editor: More than Censorship," Kingsport Times-News, 25 Nov. 1983, 8A; Parker and Weiss, 50-51)

A day later, Price sent a letter on school letterhead stationery to the local district attorney general, soliciting his help in getting "things back to normal as soon as possible." Price wrote,

> We definitely need your expertese [sic] in trying to help Mrs. Frost get some realistic perspective in regard to her children. . . . At this point we have had no contact with the father and feel that he must be brought into the situation either by the school or the court for the sake of the four children. (A copy of this letter dated 26 November 1983, was provided to the author by Vicki Frost; portions of the correspondence were also read into the record and discussed in Frost Record of Trial, 25 March 1986, F70-F72)

During the false arrest trial Price was asked "what expertise . . . the Attorney General for the district of this state would have which he could lend to a realistic perspective on the part of Mrs. Frost":

> A: Well, I felt like he could talk to her, and at least help her get some perspective as to, if she didn't want her children in our school and didn't want to go through our reading program, then there was other possibilities . . . other schools.
>
> Q: What did you expect the Court to do by way of bringing in Mr. Frost for the quote unquote sake of the four children?
>
> A: Well, . . . I felt like if . . . they could discuss the situation with him and Mrs. Frost

> together, then they could maybe come up with a solution that would help the children. In my opinion, this was harmful for the children to be out of school daily. (Frost Record of Trial, 25 March 1986, F72)

Price acknowledged in her testimony that she had also had conversations about Sarah Frost during this same period with Hawkins County's juvenile judge, Reece Gibson: "Yes. We would have had some conversations. I'm not sure it would have been . . . before Thanksgiving or after that." She explained, however, that

> Mr. Gibson is a friend, so I'm not sure I would have talked to him, probably would not have talked with any reference to the juvenile part of his duties. . . . So I don't know why I would have been talking, I might have been talking to him, but I would not have needed his advice as to what to do. (Frost Record of Trial, 25 March 1986, F75-F76)

Price's efforts were not random here. They constituted a pattern of attempts to inform and align important segments of the community's power structure on the side of the schools and to use them to bring pressure to bear on the parents. But the culminating effort to draw support for the schools and to isolate the parents came at a community meeting at Church Hill Elementary School on Monday evening, 5 December, three days after the suit had been filed. Both Price and Gibson played important roles in developing plans for the meeting.

On Friday, 2 December, the same day the parents filed their suit, Price sent a letter to the parents of all children at her school, advising them of the meeting and

urging that they attend. The letter, which is quoted below, appears as Price read it into her deposition from a copy provided to her by CWA's legal counsel. In an affidavit appended to her deposition Price stated that she was unable to "find or obtain" a copy of the letter.

> December the 2nd, 1983. Dear Parents: I want to personally apologize for the adverse, undue, and often untrue publicity that Church Hill Elementary School is getting. As the principal of your school, I am obligated to protect all 400 and . . . 83 students, and to make possible suitable working conditions for the 39 adults employed here. I also feel that as a parent, you want the best education possible for your child.
>
> As principal of your school and a mother, I now feel that we must stand for your child's rights. It is not appropriate for a few local people controlled by outside sources to try to impose their beliefs on all, and be allowed to disrupt the education of our boys and girls in Church Hill. We do appreciate the many offers of help concerning this matter.
>
> I do want you to attend a meeting Monday night in our gym at 7:00, sponsored by our PTA. One item on the agenda will be textbook selection. They will not be defending a particular textbook, but we'll have people here to explain the democratic procedure that a textbook must go through before it can be used.
>
> All the schools have band [sic] together to get parents, teachers, and taxpayers to this meeting. Your child's future is at stake. Please come. Sincerely yours, Jean J. Price, Principal. (Price Deposition, 77-78; Affidavit of Jean Price Supplementing Her Pretrial Discovery Deposition Taken on December 19, 1985, 16 July 1986)

Again, Price was attempting to depict the fundamentalist families as outside the community norms, under the influence of external sources, and a threat to the local schools. She was later asked to whom she was

referring in her statement about "a few local people controlled by outside sources":

A: The C.O.B.S. . . .

Q: Okay. What outside sources were you talking about in that same sentence?

A: Well, I don't know that I had a specific source in mind. I think the Gablers, probably.

Q: Okay. Did you have any other sources in mind?

A: At that time, probably not.

Q: Okay. What led you to believe that C.O.B.S. group was controlled by outside sources, which would include the Gablers and--at least the Gablers, maybe others?

A: Well, Vicki had shared with me the Gabler report. . . .

Q: Okay. What led you to believe, by the fact that Vicki had given you a copy of the Gabler report, led you to believe that the Gablers were controlling Vicki?

A: Well, I don't know that they were controlling Vicki, but she was citing their reasons for her objections to the book.

Q: Do you recall writing a letter to the editor about this issue?

A: Yes.

Q: Isn't it a fact that you got your . . . wording for that letter to the editor substantially out of a book written by People for the American Way?

A: Yes.

Q: Were you controlled by People for the American Way?

A: No. . . . I didn't know People for the American Way. . . . I read the book. . . .

Q: Okay, why did you say that Vicki was controlled by outside sources if all you knew is that she had a report by some people, and that she used that information in that report? . . .

A: I don't know why I said that. (Price Deposition, 82-84)

"Citizens Advocating the Right to Education". On Sunday afternoon, 4 December, Jean Price and Reece Gibson met with a small group of parents and school personnel to complete plans for the PTA meeting to be held at Church Hill Elementary School the following evening. As Price had mentioned in her letter, one of the principal topics at that PTA meeting would be the textbook selection process. But at this Sunday afternoon gathering another possible subject was brought up--the formation of a support organization, Citizens Advocating the Right to Education (CARE).

The idea to form CARE originated with Gibson

> because . . . we [were] just trying to figure out how we could combat the publicity. . . . And of course, to me it's very simple. . . . [S]omebody's getting publicity and the other side's not answering, why, you need somebody for a spokesman and you need some influential people on your side and to support your position. (Gibson Deposition, 70)

"Well, the main thing," Gibson added,

> the reason that C.A.R.E. was formed was to give the man on the street, the average citizen, an opportunity to stand up and . . . defend the school system, and to object to the disruption of the school system, with . . . the publicity and the allegations against the school system and the books and so on. (Gibson Deposition, 93)

The following evening CARE was officially formed, complete with by-laws and a board of directors. Approximately five hundred and fifty people signed membership applications (Gibson Deposition, 59) and Gibson became its president.

Harold Osborn, one of those who joined that night and played an important role in its activities, recalled the function of CARE in the controversy. CARE, he explained,

> did not participate in the lawsuit. . . . It became apparent that we were well represented legally. It also became apparent that we weren't well represented as far as public opinion, because the superintendent kinda had his hands tied with the lawsuit and so did the board members. . . . So what we did, we became the spokesman for the anti-censors against the COBS. . . . And I'd say we fought the [battle] in the [court] of public opinion, and we won.

Osborn cited as examples of CARE's activities the appearances of its organizer, Reece Gibson, as a participant in panel discussions concerning the controversy on CBS's Nightwatch and ABC's Directions. "But that's what we were doin'," he continued,

> was talkin', writin' letters, and urging people to speak out and to talk to their neighbors. . . . I think historically you'll find that this type of thing is won in the court of public opinion. . . . And that's what we were concerned about here.[40]

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[40]The following year CARE received People for the American Way's Freedom to Learn Award in recognition of its "pro-public education efforts during the 1983-84 Hawkins County censorship controversy." PAW reported that,

> using PEOPLE FOR's step-by-step citizens action guide, Protecting the Freedom to Learn, local citizens formed CARE, rallied community support and created a solid

The "pep rally". The events of the following Monday night were designed to serve other purposes than explain the textbook selection process and form Citizens Advocating the Right to Education. The Rogersville Review described what transpired as "a political rally, pep rally or even a sports event where the home team was winning and everything they did was right and cheered loudly" (W. A. Hoyt, Jr., "Emotions Fly High at PTA Meeting," 8 Dec. 1983, A2). The home team was the school system, and, as Foster Payne confessed, the meeting was intended to consolidate community support behind local educators and, conversely, to increase the isolation of the protesting families:

> . . . this event--Church Hill--was orchestrated. I don't know whether everybody knows that it was. This was the first time I've said that. . . . It was a natural offshoot of reading that book [PAW's Protecting the Freedom to Learn]. . . . It became at that point unpopular to be sympathetic with their [the parents'] cause, because they were some kind of extremists or whatever. And it was done with so much publicity. It was a very

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> coalition favoring public education and the freedom to learn. ("Censorship Foes Earn PEOPLE FOR Prize," People for the American Way Quarterly Report, January 1985, 6)

Gibson later said this statement was

> not entirely accurate, because we did not use their step-by-step guide in forming C.A.R.E., because C.A.R.E. was formed long before they became involved. But, it is correct in that we used the guide, . . . Freedom to Learn, in the ideas and in helping us form the coalition and combat the C.O.B.S. (Gibson Deposition, 217)

But when Judge Gibson and school board member Doug Cloud went to Washington, DC, to accept the award on behalf of CARE, Gibson said that "PEOPLE FOR was there when we most needed encouragement and assistance" ("Censorship Foes . . .," 6).

> orchestrated [event], and, of course, they maintained at some point that it was--and it was. And it was very highly organized and it all fell together. And I think you would have had to read the book to know how it was supposed to come down. That's the way it came down, and nobody ever knew.

Estimates of the crowd which responded to Price's and other notices ranged from eight hundred to one thousand. Speakers included Jean Price, Gay Grabeel, who had headed the local textbook selection committee, Reece Gibson, on behalf of CARE, Harold Silvers, the chairman of the school board, a female student representing a local high school group, Students Against COBS, and others. A position statement from the Church Hill Ministerial Alliance was also read at the meeting. The statement, over the names of two Baptist, one Methodist, and one Presbyterian pastors, expressed

> our confidence in and our encouragement of our public school teachers, our county school board, the administration of our county schools in Hawkins County and also those of like position at the state levels of education.

It reaffirmed their support for the doctrine of separation of church and state "in order that men would have every opportunity to express and enjoy their freedom, as they were free-to-learn more about the things of God's world" (Gibson Deposition, Exhibit No.3).

The turning point in the meeting, the event that shook it out of its business atmosphere and gave it the heat and emotion of a "political rally, pep rally or even a sports

event," came with the speech of the superintendent, Bill Snodgrass. Foster Payne recalled,

> I wanted him to make a scholarly [speech] on the ideas and thoughts and [explain] . . . that, for an education, you've got to examine a lot of ideas and, then, that you never fall far from the tree. And he was a manifestation of that. He was pretty much an old Hancock boy. . . . He'd seen a lot of ideas. I wanted him to be living proof of that. But he decided to blow them out of the [saddle] and he did. . . . [H]e just got 'em fired up.

To a crowd which quickly became partisan, Snodgrass confessed,

> It was suggested that I take a scholarly, low-key approach to what I say to you tonight. We've had three good scholarly speakers, and, besides, it's very difficult for me to be scholarly and impossible to be low key when you're being accused of being unpatriotic and anti-God.[41]

The speech which followed was frequently punctuated by wild cheering and individual comments from members of the audience as Snodgrass, like Price in her correspondence, played on the outsider and deviance themes, placing the schools squarely in the mainstream of the county culture and representing the parents as extremists, outsiders, and a threat to local institutions. But he went farther than Price, as he successfully exploited the county's provincialism, juxtaposing the county as the repository of estimable values against the evils which lurk outside its boundaries.

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[41]This and the segments that follow from Snodgrass's speech are taken from an audiotape recording provided to the author by Vicki Frost.

"We are determined," he continued,

> to have schools where teachers can practice their profession without being hampered by extremist groups. . . . We must keep our schools free so teaching and learning may occur. We Hawkins Countians do not need some outside groups with objectives contrary to ours. . . .
>
> We have many things to be proud of in Hawkins County. And one of the things that we're most proud of is our fine school system. Our recent test scores tell you that we're doing a good job. Our test scores were well above the national average, and we need to continue to build on the tremendous progress we're making. And we sure don't need some little group with outside agitators trying to tear down what we have with patience and hard work built in the last few years.
>
> A favorite saying of mine "Anyone can tear a house down, but it takes a carpenter to build one," applies to the present situation. My message to extremist groups is to become a carpenter and help us build a great school system. If you cannot do this and insist upon being a wrecking crew, take your unsound ideas to Washington, D.C. . . . or Longview, Texas.
>
> The right to have challenging and interesting material must not be taken away by outside agitators with their fat wallets and attorneys from Washington, D.C. The local groups from Hawkins County pick our textbooks, and we have a local school board from Hawkins County to adopt those textbooks. And that right must not be taken away by extremist groups either.
>
> Freedom is a wonderful thing. But I resent the fact that it is used and abused by those that would destroy it. The school board, the administrators, the teachers, and I, as your representatives, stand firm in our resolve. And we ask all of you to stand and march with us to make sure that the extremists and outside agitators don't use their wrecking ball on our fine Hawkins County school system.

Clay Bowers attended the meeting and felt that it had been a

frightening experience. Not for my safety, but . . . to see rational people . . . just worked up into this emotional frenzy. And where reason was thrown out. . . . It was a fear that it still can happen any day. The right emotional impact. The right charismatic leader can work people up and get them to commit suicide like Jim Jones . . . in Guyana. . . . I'm not going to get mad at somebody for taking a stand, but when they take a stand that is based on emotion and hype and yelling and cheering. . . . I was kind of just standing back from these people, not gonna jump in there with them.

Rev. Martin McCallister, who was late arriving at the meeting, carried vivid memories of what he had observed:

I thought there would be a number of people there, but, good lord, I walked in that building and there was wall-to-wall people. . . . But there were some expressions from the crowd, and even from some of real hostility toward the fundamentalist group in that they had raised questions about the textbook curriculum. And even some of the kids who were there from Volunteer High School, who had come with some very cutting remarks with regard to the COBS. . . . They were kind of country-boy crude humor, such as "You know what you can do with a cob," and that kind of thing. . . . Okay, the next thing, Snodgrass gets up, and I realize and recognize . . . there was probably a good deal of pressure which had been exerted on him and his office at Rogersville through some of the fundamentalist folks who had been in on him. But, anyway, . . . the bottom line is, Snodgrass vented. And . . . I'll be honest with you--Snodgrass whipped that crowd up, because he knew he had support in the room for his side and for the community, the educational community, against these other folk. And . . . I'm sure that there were some of those from the Vicki Frost group, from the fundamentalist group, who were there and who were very silent. Had I been one of them sittin' in that room, I would have been very afraid for my life. I saw Snodgrass whip that crowd up into, it was almost like a pep rally for hate. And years ago . . . the movie <u>Elmer Gantry</u> came out, in which there was a reporter . . . who was amazed at how Elmer Gantry controlled and mesmerized the crowd. And he couldn't believe what he was seein'. . . . I

> stood there as a pastor and saw this guy, who could have, in a real sense, been cool and poured oil on the waters and maintained . . . a dignity. I saw this guy really whip the crowd up. I'm sure that he got so fed up with it that this is all he could do. And so he did it. And I would have been afraid for my life had I been one of the fundamentalists. . . . I really felt like that reporter. But as a pastor I was watching an educator do this and control and mesmerize the crowd. . . . And I think Snodgrass oughta be condemned for that. He was absolutely an abominable representative of what I think an educator needs to be.

Bob Mozert offered a description from the parents' perspective:

> [T]hat meeting was to make us out to be like the bad guys, because we were the ones that filed suit against them. And that's exactly what they did. Mr. Snodgrass got up there with clenched teeth, clenched fists, and said that we were accusing him of being ungodly, unpatriotic, trying to make it in terms of personal issues, which it never was . . . never had been brought up as a personality matter, but because of the content of the readers. . . . And it was obviously drawing sympathy from the crowd, and it did. It did the purpose that they wanted it to. They reserved seats for us up front, and those of us among the plaintiffs were seated up front, maybe about thirty to forty of us, something like that, while the rest of them all jeered and it was a mass mob where they were yelling, hollering, screaming. . . . We just sat there and listened to them. . . . I heard one lady there made a comment after having seen the whole meeting. . . . She was there . . . from Bristol. . . . Suzanne Clark's her name . . . made a comment that it reminded her of how the crowd must have been when they crucified Jesus. She said that's exactly how they seemed to act . . . to respond. (Mozert Interview)

Rev. William Patterson did not attend because he had another meeting that night,

> but when I tried to get home, I couldn't hardly get within a half mile of my house. Because the cars were lined up on both sides of the road, and

> I proceeded on to the little country store to observe what took place. And to listen to the comments as the people came in. And it was lynch-mob-type atmosphere.

Foster Payne was surprised at the turn of events. "Boy, it was an explosive meeting," he recalled. "I thought first that we [school personnel] would be in danger, and then after that meeting I thought they might have been in danger." Payne explained,

> At first I would have thought some of us would be in danger of some kind of violence. I wouldn't have thought shooting or anything like that, but I wouldn't have thought not either. I wouldn't have been surprised at some violence, physical violence. . . . There were a few of the people that everybody knew of the COBS that were there. This . . . just became a rousing ovation [for the school system], I guess you'd say. And I believe it did turn it around, because if you had any other persuasions, it wouldn't have been well received to express them.

End of the community phase. The next evening the committee that had been formed by the school board chairman to look into the four points Bob Mozert had raised during the October meeting assembled with principals of the county's schools. The comments that came out of that meeting, when compared to the observations of the board members in October (supra 180-81) are a measure of how far relations had deteriorated between the parents and school officials and reflect the matured school system strategy. The Kingsport Times-News reported the day following the meeting that

> what began as a review of dress codes ended with a discussion of the 3-month-old dispute and a general consensus of opinion about the group.
>
> "I think that COBS is trying to dictate education regardless of textbooks or anything else. If textbooks were not the issue, they'd bring up something else," said board member Conley Bailey.
>
> "Every tactic they've used so far has come out of Longview, Texas," he added . . .
>
> Volunteer High School Principal Pat Lyons was one of several persons at the meeting who agreed with that opinion. "We took it (COBS) to be an honest effort to do something for their children's education. We failed to realize it was a well-orchestrated group," he said.
>
> "We're not dealing with common, down-to-earth people," said Jean Price, principal of Church Hill Elementary School. "We're dealing with well-planned, well-thought-out, organized people." (David Brooks, "Hawkins School Board, Principals Focus on COBS," 7 Dec. 1983, 6A)

Ironically, although COBS had by this time ceased to exist, and although the school board and other defendants in the subsequent trial stipulated that COBS "did not have formal members and no formal votes were taken to establish policies or positions" (supra 176), it was being portrayed to the public as not only alive and well but also as a clearly organized group with well-defined goals, the most obvious of which was to undermine the local educational system.

At the December meeting of the full school board the following Thursday, board member Larry Elkins

> gave a report of the committee meeting and stated that they had met with the majority of the principals Tuesday night. . . . The committee

> concluded that our policy standards were up to anyone's standards and didn't feel they needed to change anything.[42] (Official Minutes . . ., 8 Dec. 1983, 136)

On the day of the school board meeting Jay Salley suspended Travis Mozert and Gina Marshall for the third time, again for ten days.

One eleventh-hour effort was made that weekend to resolve the crisis as lawyers for both sides sought some compromise which would enable the children to return to school. The Kingsport Times-News reported that Snodgrass said the school's lawyer

> brought up the possibility of the students being allowed to return to school immediately if they would attend reading classes where the disputed textbooks are used: a proposal school officials have previously said they would support.
>
> "We've been willing to do this all along . . . but they didn't seem too receptive," said Snodgrass.
>
> The county was not willing, however, to allow the students to study books other than those in the disputed series. . . . (David Brooks, "Hawkins Textbook Talk-session Stalls," 13 Dec. 1983, 6A)

The effort failed because it did not provide any accommodation for the families' religious beliefs. On Tuesday, 13 December, school officials lifted the

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[42]Compare the committee's conclusion with Rev. Martin McCallister's observation about Hawkins Countians:

> There seems to be a kind of mindset within this area that what and how we feel about things is pretty much correct, about the way everybody ought to look at life, and outside of this area everything else is in a sense kinda wrong. There's great security in that. (supra 38)

suspensions, but some of the families had already begun to look to other sources for their children's education. Within the next few days the Frosts and Eatons enrolled their children in private Christian schools and the Mozert children entered Kingsport public schools, where the Holt books were not used. The Baker girls had been in a church-sponsored school since mid-October. And early in January the Couch boys also transferred to a private Christian school.

The Community Phase: An Overview

During this phase of the textbook controversy the issue of whether the families' free exercise rights had been violated by the content of the Holt books was never seriously addressed by Hawkins County school officials. Since the parents' religious views and their interpretation of the textbooks were not shared by local educators and many other members of the community, their complaints enjoyed no public legitimacy. As a result, the matter was not seen as a problem of conscience for the families or as a need to protect the rights of a minority. Instead, by portraying the families as "extremists," "fanatics," and "outsiders," school supporters discredited their objections and invalidated any need for accommodation. If the families were not willing to accept the curriculum authorized by the school board, then, local educators argued, their children belonged in private, church-sponsored schools.

The question remains, however, was accommodation feasible? Jay Salley had offered a prototype for approximately six weeks with ten students at the middle school. And after the suspensions were lifted, he permitted Gina Marshall and Steve Whitaker to return to class under alternative arrangements, even though he worried about the possibility of losing his job for such action (Frost Record of Trial, 25 March 1986, F87-88; Mozert Record of Trial, 17 July 1986, 924-26).

There was no evidence of any effort by school officials to measure the program or assess the needs of these students in order to evaluate accommodation as an alternative to uniform use of the Holt books (supra 192-93).[43] Nor was

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[43]Board chairman Harold Silvers gave four reasons why he did not favor use of an alternative book: extra teacher preparation; possibly inferior book quality; "the students would [not] receive the proper education that the curriculum would provide"; and "the disruption of having favoritism shown by one group as opposed to another." But he admitted that he had no data to support his second and third reasons (Silvers Deposition, 111, 133-34).

In an affidavit filed in December 1983 Jay Salley, referring to the use of alternate readers, said that "the process of education broke down and became counter-productive." When asked later what he meant by this description, he explained that the children weren't "under the direct supervision . . . of the . . . classroom teacher" and that they weren't being tested in accordance with the Basic Skills Program. He was uncertain, however, whether the alternate texts the children were using were correlated with the basic skills. The following exchange ensured:

Q: Why couldn't they have given them the basic skills test put out by the state?

A: Well, they--they didn't.

. . . . . .

there any evidence that other proposals such as hiring a tutor at parent expense in lieu of the regular reading class or the use of parents as volunteers were ever explored.

School officials repeatedly raised the problem of precedent as an objection to accommodation: How could a school system with very limited resources respond favorably to innumerable requests for alternate arrangements? But during deposition questioning two years later they were unable to cite any examples of requests similar to those which had been made by the parents (Bailey Deposition, 51; Cloud Deposition, 14; Dykes Deposition, 35-36; Gibson Deposition, 151-52; McKee Deposition, 12; Salley Deposition, 99; Silvers Deposition, 16; Snodgrass Deposition, 122-23). Moreover, school personnel never mentioned the possibly unattractive nature to other parents of the options these families were suggesting--a kind of self-study for their children, parents going to school daily to assist their children with reading, or paying for a reading tutor.

Thus, school opposition to accommodation was largely speculative in nature but had powerful appeal to the

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Q: And, so the only way you could find out how the plaintiffs' children were doing was to give them the test. Is that right?

A: Yeah.

Q: And nobody ever gave them the test.

A: No, I don't think, while they were out of the classroom. (Salley Deposition, 103-11)

conservatism of Hawkins Countians. In their view one of the community's major institutions, an integral part of the local culture and local traditions, was under attack. This perception was reinforced by the formation of COBS with its confrontational tactics under Mozert's leadership and by the entry of PAW with its fears of censorship and loss of academic freedom in the public schools. Ironically, COBS' most enduring element turned out to be its acronym, which school supporters employed as an epithet signifying everything the community perceived to be distasteful about the parents--outside control, fanaticism, censorship, and departure from community norms. In such an atmosphere accommodation, if it was considered at all, was not believed by most citizens to be in the county's best interests.

# CHAPTER V

## THE CONTROVERSY: THE COURTROOM PHASE

The courtroom phase of Hawkins County's textbook controversy began on 2 December 1983 as the fundamentalist parents filed their complaint in federal district court (supra 213). It ended almost exactly five years later when, on 5 December 1988, the United States Supreme Court denied certiorari on the last of two appeals. The intervening period was marked by two separate civil rights suits, one dealing with the children's use of the Holt books and the other with false arrest charges filed by Vicki Frost. (Table 4 is a chronological listing of the major events in the free exercise suit, and Table 5 contains similar data for the false arrest proceedings.)

The texture of the conflict changed in three respects during this second phase. First, both the parents and the school system received legal and financial support from and saw their respective causes subsumed by national organizations. Second, although the principle of free exercise rights never reached the level of public concern during the community period, it became the central issue of the courtroom phase: Had the free exercise rights of the plaintiff children been violated by the Holt books and the uniform textbook policy of the school board? If so, could their special needs be accommodated by the local public

TABLE 4

Chronology of Major Events
(Courtroom Phase -- Free Exercise Suit)

| Date | Event |
|---|---|
| 23 Nov 1983 | Hull sworn in as federal district judge. |
| 2 Dec 1983 | Parents file suit. |
| 9 Dec 1983 | Initial hearing on complaint. |
| 24 Feb 1984 | In response to defendant motion, Judge Hull dismissed eight of nine plaintiff allegations. (Mozert v. Hawkins County Public Schools, 579 F.Supp. 1053 [1984]) |
| 15 Mar 1984 | Judge Hull dismissed ninth plaintiff allegation. (Mozert v. Hawkins County Public Schools, 582 F.Supp. 201 [1984]) |
| 18 Jul 1985 | Sixth Circuit Court of Appeals reversed Hull and remanded case for evidentiary hearing. (Mozert v. Hawkins County Public Schools, 765 F.2d 75 6th Cir. [1985]) |
| 7 Feb 1986 | Petition approved for Tennessee State Commissioner of Education to be made intervening defendant in suit. |
| 14-23 Jul 1986 | Trial in United States District Court before Judge Hull. |
| 24 Sep 1986 | Final arguments. |
| 24 Oct 1986 | Decision announced in favor of plaintiffs. Defendants enjoined from requiring use of Holt readers, ordered to permit plaintiff-children to participate in school without attending reading classes. Families required to teach children reading through opt-out program. (Mozert v. Hawkins County Public Schools, 647 F.Supp. 1194 [1986]) |

Table 4 (continued

| Date | Event |
|---|---|
| 15 Dec 1986 | Plaintiffs awarded $50,521.59 compensatory damages (later amended to $51,531.59). |
| 24 Aug 1987 | Sixth Circuit Court of Appeals reversed and remanded case for dismissal. (Mozert v. Hawkins County Board of Education, 827 F.2d 1058 6th Cir. [1987]) |
| 22 Feb 1988 | U. S. Supreme Court denied plaintiff appeal for writ of certiorari; Sixth Circuit ruling stands. |

TABLE 5

Chronology of Major Events
(Courtroom Phase -- False Arrest Suit)

| Date | Event |
|---|---|
| 23 Nov 1983 | Vicki Frost arrested at Church Hill Elementary School and charged with violating two sections of the Tennessee Code--improperly on school premises and trespassing. |
| 9 Dec 1983 | Preliminary hearing on charges in General Sessions Court, Rogersville. Charges dismissed. |
| 20 Nov 1984 | Frost filed false arrest suit. |
| 21 Jan 1986 | Trial began. |
| 27 Mar 1986 | Jury awarded Frost $70,000. |
| 12 Jul 1988 | Sixth Circuit Court of Appeals, upon appeal of both plaintiff and defendants, reversed the district court decision. (Frost v. Hawkins County Board of Education, 851 F.2d 822 [6th Cir. 1988]) |
| 5 Dec 1988 | United States Supreme Court denied plaintiff appeal for writ of certiorari, thus allowing Sixth Circuit ruling to stand. |

schools? And third, members of the families and local educators continued to be important actors in the controversy, but resolution of the conflict proceeded from within a framework of judicial tests and precedents, legal definitions, constitutional interpretations, expert testimony, and attorneys' strategies.

The Presiding Judge

With the exception of a preliminary hearing in Rogersville Sessions Court on the trespassing charges against Vicki Frost,[43] the courtroom action for both civil rights suits began in the United States District Court, Northeastern Division, for the Eastern District of Tennessee, in Greenville, Tennessee. The presiding judge in each instance was Thomas G. Hull.

One circumstance generally overlooked in commentary on the controversy is that Hull's career as a federal judge began with the textbook case. He took his oath the same day that Vicki Frost was arrested and only nine days before the parents filed their suit. Fifty-seven at the time of his appointment, a Republican, and a member of the United Methodist Church, Hull had practiced law in Greeneville for

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[43]The general sessions judge in Rogersville found that one state statute which Frost had been charged with violating did not apply to parents and that the other had previously been found unconstitutional (Transcript of Evidence for Preliminary Hearing, State of Tennessee v. Vicki Frost, Case No. 61862, 9 Dec. 1983, General Sessions Court for Hawkins County, 50).

more than twenty years, had served ten years as a representative in the Tennessee state legislature, and had been a state circuit judge for nearly seven years, presiding over an area which included Hawkins County. He resigned this latter position in 1979 to become Governor Lamar Alexander's general counsel, a post he held for two years.[44]

In an article which appeared in the Kingsport Times-News approximately two months before Hull's nomination for the vacancy on the federal bench, "problems" were noted concerning his chances for the appointment. As one of three potential nominees, he was said to have "limited" judicial experience, which might present a "stumbling block." The paper also noted that "as a circuit court judge, Hull did not file a lot of scholarly, legal writings" and quoted one attorney as having felt that he was "known to shoot from the hip too much" during his tenure as circuit judge (Janet Day, "Problems Showing over Hull," 11 Sep. 1983, 3A). One interviewee for this study made a similar observation:

> I've practiced law in front of the learned Tom for several years. I loved him off the bench. He's a jolly good fellow. . . . But on the bench he was a hip-shooter. I've seen more cases decided in his court on opening arguments than any other way.

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[44]Another member of Alexander's staff who was to play an important role in the courtroom phase of the controversy was also from Greeneville. Dr. Robert L. McElrath, Tennessee's Commissioner of Education during Alexander's eight-year tenure as governor, had, prior to his appointment, been superintendent of the Greeneville public school system (infra 259-61).

On the other hand, Hull had been screened and cleared by the American Bar Association's Standing Committee on the Federal Judiciary. One ABA official reported "that the committee interviewed more than 80 lawyers and judges, not one of whom had a derogatory remark about Hull" (Amy Truxton, "Hull Takes Oath as U. S. Judge," Greeneville Sun, 24 Nov. 1983, 6).

The Free Exercise Issue

The suit which the families filed in Hull's court focused on questions dealing with the First Amendment's free exercise clause. In their complaint they charged that

> the actions of the defendants in forcing the student-plaintiffs to read school books which teach or inculcate values in violation of their religious beliefs and convictions is a clear violation of their rights to the free exercise of religion protected by the First and Fourteenth Amendments to the United States Constitution.

A second issue, charging violation of "the fundamental right of these parents to control the education and religious and moral instruction of their children," was included (Complaint for Preliminary and Permanent Injunctive Relief and for Violation of Federal Civil Rights, 2 Dec. 1983, 8-9, Mozert Trial Files). But throughout the ensuing trial and appeals, this question of parental rights remained in the background. It was the free exercise rights of the children that was to dominate the courtroom phase of the controversy.

Four tests have evolved to guide courts in deciding free exercise cases:

(1) Is the plaintiff's belief religious and is it sincerely held?

(2) Is this belief burdened by some particular act or policy of the state? If no burden exists, the complaint is dismissed.

(3) If there is a burden, does the state have a compelling interest which outweighs the plaintiff's free exercise rights?

(4) Can this compelling interest be realized by less restrictive means which will achieve state objectives and still accommodate plaintiff interests?[45]

In resolving the first question, a court must determine what kind of belief is, within the intent of the Constitution, religious in its origin and aims. According to the Harvard Law Review, the Supreme Court has developed a dual definition for religion: an expansive, functional, individual-oriented meaning similar to Paul Tillich's "ultimate concern" for free exercise cases and a more narrowly drawn definition based on operational criteria associated with "formal denominational traits" to be used in establishment clause deliberations ("Toward a Constitutional

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[45]What this last question infers, and what it is important to recognize in free exercise litigation, is that the remedy which plaintiffs seek is not to put an end to the government's practice or policy arising out of its mandate, but simply to be granted an exemption for themselves from its imposition and effects.

Definition of Religion," 91 (1978):1089).[46] Although such a definition makes allowance for the tension which exists between the free exercise and establishment clauses, it also appears to open the door to a host of individual appeals for exemption to a law or policy based on questionable if not fraudulent claims to religious belief. The result could be

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[46]Justice Douglas, writing for the majority in United States v. Ballard (1944), offered what has become a model of the broad free exercise interpretation. Religious belief, he said,

> embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. (64 S.Ct. 886)

In Wisconsin v. Yoder (1972) the Supreme Court seemed to contract somewhat from Ballard by declaring that "the claims must be rooted in religious belief." According to Yoder, the characteristics of religious belief included "deep religious conviction, shared by an organized group, and intimately related to daily living" (92 S.Ct. 1533). But nine years later, while acknowledging that "only beliefs rooted in religion are protected by the Free Exercise Clause," the court expanded on Yoder and harked back to Justice Douglas:

> . . . the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection. . . . Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ. (Thomas v. Review Board, 101 S.Ct. 1425 [1981])

social and political chaos. To counter this possibility, "free exercise claims might, in appropriate cases, be allowed only if the petitioner agrees to the imposition of some alternative duty or burden" (1082).[47]

The second test, that of burden, attempts to measure the degree of compulsion or constraint exerted on individual religious beliefs. Plaintiffs in free exercise litigation must demonstrate that their religious beliefs have been coerced, either directly or indirectly by the challenged government policy or program.[48] In Thomas the Court prescribed a means for determining burden:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a

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[47]Reflecting upon his decision in the textbook case, Judge Hull said he believed that he had imposed on the plaintiffs such an alternative burden (infra 271-72).

[48]In a 1963 case involving state denial of unemployment compensation benefits to a Seventh Day Adventist who declined employment opportunities which required her to work on Saturday, the Supreme Court ruled in her favor, observing that

> not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Government imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. (Sherbert v. Verner, 83 S.Ct. 1794)

> burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. (101 S.Ct. 1432)

Against this burden courts are required to apply the third test, the specific interests of the state in maintaining such a program or policy. These interests must then be weighed against the burden experienced by the plaintiffs.[49] This requires application of the fourth test, the least restrictive means. The primary consideration for courts here is whether the state can, by some alternative procedure, realize its interests and still manage to accommodate individual free exercise concerns.[50]

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[49]The Supreme Court has long acknowledged the state's compelling interest in the socialization of its youth through a formal education program (supra 72). But in those cases where church and state conflict in the classroom, the Court has declared that

> the values of parental direction of the religious upbringing and education of their children in their early formative years have a high place in our society. . . . Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, "prepare [them] for additional obligations." (Wisconsin v. Yoder, 92 S.Ct. 1532 [1972])

[50]In its discussion of "least restrictive means," the Thomas Court explained:

> The mere fact that the petitioner's religious practice is burdened by a governmental program does not mean that an exemption accommodating his practice must be granted. The state may justify an inroad on religious liberty by showing that it

Thus, Judge Hill had to determine whether the plaintiffs' beliefs met religious tests, whether these beliefs were burdened sufficiently to require constitutional protection, whether the state's compelling interest in education should take precedence over the plaintiffs' burden, whether the state was using the least restrictive means to achieve its compelling interest, and, if not, whether the plaintiffs' free exercise rights might be accommodated without treading on establishment clause prohibitions (i.e., without causing excessive government entanglement with religion or without favoring one religion over others).

Initial Deliberations and Findings

Following two months of hearings, motions, and various legal maneuvers, Judge Hull issued his first finding on 24 February 1984. The plaintiff families, he explained, had made nine allegations concerning the Holt, Rinehart, Winston reading series.[51] But since the families did not contend

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is the least restrictive means of achieving some compelling state interest. However, it is still true that "[t]he essence of all that has been said and written on the subject is that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." (101 S.Ct. 1432)

[51]The nine allegations were that the Holt books

(1) teach witchcraft and other forms of magic and occult activities; (2) teach that some values are relative and vary from situation to situation; (3) teach attitudes, values, and concepts of

that the school system was "attempting to coerce the school children into performing any symbolic act, subscribing to any particular value, or professing any particular form of belief," he reasoned that their "assertion appears to be that the mere exposure to this broad spectrum of ideas and values which they find offensive amounts to constitutional violation." Relying on a ruling that had come out of the Kanawha County conflict nine years before,[52] Hull held that only one of the parents' claims might involve a violation of their constitutional rights and dismissed the other eight allegations. "The First Amendment," he determined,

> does not protect the plaintiffs from exposure to morally offensive value systems or from exposure to antiethical religious ideas. Only if the plaintiffs can prove that the books at issue are teaching a particular religious faith as true (rather than as a cultural phenomenon), or teaching that the students must be saved through some religious pathway, or that no salvation is required, can it be said the mere exposure to

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> disrespect and disobedience to parents; (4) depict prayer to an idol; (5) teach that one does not need to believe in God in a specific way but that any type of faith in the supernatural is an acceptable method of salvation; (6) depict a child who is disrespectful of his mother's Bible study; (7) imply that Jesus was illiterate; (8) teach that men and apes evolved from a common ancestor; and (9) teach various humanistic values. (Mozert v. Hawkins County Public Schools, 579 F.Supp. 1052 [1984])

[52]That ruling stated that the First Amendment "does not guarantee that nothing about religion will be taught in the schools or that nothing offensive to any religion will be taught in the schools" (Williams v. Board of Education of the County of Kanawha, 388 F.Supp. 96 [1975]).

> these books is a violation of free exercise rights. (Mozert v. Hawkins County Public Schools, 579 F.Supp. 1052-53 [1984])

Approximately three weeks later, on 15 March 1984, at the conclusion of a second hearing on a defense motion to dismiss the case, Hull ruled "that the plaintiffs have been unable to show this Court any part of any book, or anything about the books taken as a whole, that could impinge on the constitutional rights of the plaintiffs." Consequently, he dismissed the final allegation (Mozert v. Hawkins County Public Schools, 582 F.Supp. 203).

In arriving at this conclusion, Hull had concentrated on the content of the books rather than on the nature of the families' beliefs, whether these beliefs were burdened, and the state's compelling interests in the matter. He wrote that "the test would be whether the books were neutral on the issue of religion, or violating this neutrality either by advocating a particular religion or by being anti-religion" (Mozert, 582 F.Supp. 201). In reality, these were all establishment clause issues. Continuing this line of reasoning, Hull found it

> clear that the books neither instruct the children that they must be saved, nor that they do not need any form of religion. The plaintiffs do not suggest otherwise. What they object to is the underlying philosophy of the readers, taken as a whole, which is geared to making the school children better participants in the world community.

After examining some examples of offensive textbook selections submitted to the court by the plaintiffs, Hull

expressed satisfaction that, although the books did contain the "philosophical view point" which the families had suggested, they did not violate their First Amendment rights. On the contrary, he found that the Holt series "carefully" observed a "constitutionally mandated neutrality" and could prepare "today's children to face our increasingly complex and diverse society with sophistication and tolerance" (Mozert, 582 F.Supp. 201-203).

For more than a year it appeared that the controversy might end here, with the families' complaints rejected by both the community and the court. But on 18 June 1985 the Sixth Circuit Court reversed and remanded the case to Hull "for further proceedings" (Mozert v. Hawkins County Public Schools, 765 F.2nd 79).[53]

In a speech to the Kingsport Bar Association at its annual Law Day Dinner on 1 May 1987, Judge Hull reflected on this action. "In retrospect," he said,

> I think the Sixth Circuit was right in reversing. My decision focussed on the books--and that they did not establish a religion. I had not focussed

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[53]In making the ruling, the three-judge panel disclaimed any "opinion on the merits of the plaintiffs' claims or those of the defendants as we have considered only the procedural posture of the case . . ." (Mozert, 765 F.2d 79). What they told Judge Hull was that there were certain factual issues (i.e., whether the plaintiffs' religious beliefs were sincere, whether they were burdened by use of the Holt textbooks, and whether accommodation of the families' request could be realized without trespassing on establishment clause prohibitions) which had to be resolved. In other words, the Circuit Court restated the guidelines for examining the free exercise implications of the plaintiffs' complaint.

> on the plaintiffs themselves who contended that the neutrality itself was a burden on their belief. The implication that one religion was as good as another was offensive to them. And they were claiming that their religion required that they shelter their children from exposure to ideas that were offensive to their beliefs. I had focussed more on the establishment clause requirements of neutrality than the free exercise clause protection. (Thomas G. Hull, "The Religion Clauses of the First Amendment and the Hawkins County Textbook Case," from a copy provided to the author by Knoxville attorney Margaret Klein. Hereinafter, Hull Speech.)

The Trial

With the case back in Hull's court, both sides engaged in lengthy discovery questioning of participants and experts before the matter finally came to trial on 14 July 1986, more than a year after the Sixth Circuit had reversed the two summary judgments. During this period Tennessee's commissioner of education, Dr. Robert L. McElrath, petitioned and was admitted as an intervening defendant in the lawsuit (Ron Schaming, "McElrath Made Party to Textbook Lawsuit," Greeneville Sun, 10 Feb. 1986, 7). The courtroom proceedings extended through 23 July, final arguments were heard on 24 September, and Hull issued his opinion on 24 October. The parties met one final time before Judge Hull on 15 December 1986 to determine damages to be awarded.

The advocates. During the trial the parents were represented by Concerned Women for America's general legal counsel, Michael Farris. An attorney and an ordained Baptist minister, Farris graduated magna cum laude from

Western Washington University and received his J. D. degree from Gonzaga University School of Law. From 1980 until 1982, prior to his full-time relationship with CWA, he served as executive director of the State of Washington's Moral Majority organization. Later he founded the Home School Legal Defense Association in Washington, D. C. Beverly LaHaye wrote of Farris,

> CWA's association with Michael Farris has proved to be providential. . . . He is a brilliant lawyer and a firmly committed believer in Jesus Christ. He is determined to see that Christianity is not stamped out in America. . . . I believe he has been divinely appointed to serve as a defender of the rights of Christians. (Beverly LaHaye, 76-77)

At the head of a battery of lawyers representing the school board (although retained by People for the American Way) was Timothy B. Dyk, a partner in the Washington, D. C. law firm of Wilmer, Cutler & Pickering. After graduating magna cum laude from Harvard Law School, Dyk had served as law clerk to Supreme Court justices Reed and Burton and later to Chief Justice Warren. One of Dyk's areas of expertise dealt with First Amendment issues. Also assisting for the defense was William H. Farmer, deputy attorney general for the State of Tennessee.

Hull's approach. Judge Hull's attitude toward conduct of the trial--and perhaps an explanation for its length--can be found in an exchange with Farris, who had objected to the testimony of a defense witness concerning the science

curriculum in Hawkins County's schools. Farris maintained that she was not an expert and that "she doesn't know what the science curriculum is, she never taught the science curriculum." Hull responded,

> I'll let you cross-examine her and you can bring out her inability to know. Overruled. I'm going to let it in. I'm not sure it's germane to this issue either, but I'm going to put it in here, so when the case goes up, and they can say this went in, going to be in where somebody can say to the contrary. And we're all going to put this case to bed here this time, as far as I'm concerned. And we can go to higher ground, but I think we need to let it all come out. I'll take your objection under consideration at the proper time, but I think it's fair to have it, in the meantime. On cross-examination, bring out her inadequacies, if any. (Mozert Record of Trial, 22 July 1986, 1412-13)

Observers from both sides agreed on Hull's thoroughness and fairness during the trial. Harold Osborn felt that

> in this trial he was very patient. He would make a sharp comment, but . . . he was just banterin' with the lawyers, you know. But he let everybody get their proof in, and he considered it. I honestly believe he probably read every deposition that was submitted. And he tried his best to accommodate everybody.

And according to Rev. William Patterson, "Judge Hull was fair as fair could be. . . . 'Cause he excluded nothin'. He included everything."

Deliberating the issues. As the trial began, the problem for the Court--and the strategy of the attorneys for the litigants--concentrated on the three issues of burden, state compelling interest, and least restrictive means. To

a lesser extent, the nature of the plaintiffs' beliefs was also debated.

Plaintiffs' beliefs. Although the defendants had stipulated that "the sincerity of the plaintiffs' religious beliefs is not in dispute" (Amended Joint Stipulation . . ., 7), they did challenge whether these beliefs were "central" to their religion and thus deserving of First Amendment protection. But Hull saw the matter in a different light:

> The plaintiffs believe that they must not allow their children to be exposed to the content of the Holt series. The Court is of the opinion that it should determine whether this belief is essentially religious and not whether it is a central tenent [sic] of the plaintiffs' faith. . . . Based on the stipulations of the parties and the proof offered at trial, therefore, the Court FINDS that the plaintiffs' beliefs are sincerely held religious convictions entitled to protection under the Free Exercise Clause of the First Amendment. (Mozert, 647 F.Supp. 1198-99)

Burden. Insofar as burden was concerned, the defendants had stipulated that the material in the Holt series did "offend the plaintiffs' religious beliefs," but they refused to concede that the contents violated these beliefs or unconstitutionally burdened their free exercise of religion (Amended Joint Stipulation . . ., 27). In other words, the defense was contending that there was no element of coercion.

To the plaintiff families, the burden lay in the school board's policy requiring use of the books, reinforced by repeated suspensions of those students who refused to do so. "The plaintiffs," Farris argued, describing the situation in

terms similar to that found in either Sherbert or Thomas (supra 243-44),

> must choose between an otherwise available government benefit, going to the public schools, one of the most important public benefits in this country, or adherence to their religious beliefs; [they] can't have both. (Mozert Record of Trial, 23 July 1986, 1660).

According to the defendants, however, the plaintiff children were not being forced to accept as truth the content of the books. "[T]hroughout the course of all . . . the plaintiffs' objections to the textbooks," Farmer insisted,

> nowhere, anywhere do we see a burden as that term is constitutionally defined on these Plaintiffs. They are not being forced to believe anything. They are not being forced to practice anything. We have a public school curriculum that we have offered to them. They are welcome to it. We're not trying to change their faith, we're not trying to attack their religion. . . . Where is the burden? The burden, I submit, . . . is the burden that is self-imposed by the Plaintiffs. They have not shown where we have done anything to encroach upon their religious beliefs. We haven't. (Mozert Record of Trial, 24 Sep. 1986, 70-71)

Additionally, the defense maintained, there was no burden as long as the plaintiffs had an option available to them. "A long time ago," Dyk observed,

> the Supreme Court said in Pierce versus The Society of Sisters, there is a constitutional right to go to private school instead of public school. The plaintiffs in this case have that right. They can go to church school or indeed, they can educate their children at home. Sometimes the public schools are not the place for people with very diverse religious beliefs. This is one of those cases. (Mozert Record of Trial, 23 July 1986, 1676).

But Hull concluded otherwise. "It seems hardly possible," he wrote,

> to question the fact that the plaintiffs' free exercise rights have been burdened. Plaintiffs' religious beliefs compel them to refrain from exposure to the Holt series. The Board has effectively required that the student-plaintiffs either read the offensive texts or give up their free public education. This case is clearly in line with Thomas, Sherbert, and their progeny. Accordingly, the Court FINDS that the plaintiffs' free exercise rights have been burdened by the school board policy.[54] (Mozert, 647 F.Supp. 1200)

Compelling state interest. As the trial progressed, it soon became apparent that compelling state interest would not be a divisive issue. "No party disputes," Judge Hull wrote, "that the state's interest in education meets these various [judicial] tests." Taking a sentence from Yoder, he concluded that "providing public

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[54]Later, Hull reflected on the reasoning that had led to this finding:

> Under the facts of the Hawkins County case, the state benefit at issue was the right to attend free public schools. This right was conditioned on the plaintiffs[']willingness to read from the Holt Rhinehart [sic] and Winston readers. And the uncontroverted proof was that the plaintiffs['] religion forbids them to expose their children to the themes in the text book series. The conclusion that the defendants had, in fact, burdened the plaintiffs' free exercise rights was inescapable.
>
> Once this threshold had been crossed, the plaintiffs had presented a prima facie case and it was incumbent upon the defendants to show that compelling state interests justified this burden and that less restrictive means to accomplish the state's objectives were not available. (Hull Speech)

schools ranks at the very apex of the function of a state" (Mozert, 647 F.Supp. 1200). The difficulty lay in determining the manner in which the state might best fulfill its compelling interests in the education of its youth.

Less restrictive means. Once the questions of plaintiff belief, burden, and compelling state interest had been resolved, the only remaining issue dealt with less restrictive means: was there some alternate method by which the state might realize its compelling interest in the education of its youth and still accommodate the religiously based needs of the plaintiffs? Since the trial's outcome could swing either way as a result of the answer, a disproportionate amount of the trial was consumed by this issue.[55]

According to Farris, the state, in requiring the use of a single textbook, was defining its compelling interest too broadly. The plaintiffs' counsel asked whether the need for uniformity rose

> to the level of a compelling state interest? We're arguing for accommodation and they're arguing for rigid uniformity. . . . A compelling state interest, we would submit, is something that

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[55]It should be noted that, in accordance with Thomas (supra 244-45n), "the state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." As a result, the burden of proof shifted here to the defendants to demonstrate that the curriculum and teaching methods in use in Hawkins County were the least restrictive means of attaining state goals in the education of local youth.

> all children in the state of Tennessee have to learn.

But all children, Farris reasoned, don't have to participate in the state's Basic Skills First Program because it is not required of students in private schools or of those participating in home schooling as provided in Tennessee law. "The area where we think this case really boils down to . . .," he told the Court,

> is the least restrictive means test. . . . And that is, can the schools accommodate these kids without ruining . . . or seriously harming the education for everybody else? . . . [I]f it's a close case, we win, because the burden of proof is on them [the defendants]. . . . [T]hey have erected a theory that says, if we win there will be destruction of public education as we know it today. (Mozert Record of Trial, 24 Sep. 1986, 21-22)

Hull saw his task as deciding "whether the state can achieve literacy and good citizenship for all students without forcing them to read the Holt series" (Mozert, 647 F.Supp. 1201). A clue to this decision lay in the alternatives available to the use of a uniform textbook. Thus Hull pressed Farris concerning the type of accommodation which might be acceptable to the parents:

> MR. FARRIS: All the children that are left are in the middle school years. . . . [W]hen they come to the reading hour, they go out of the classroom and they don't go to that reading class, they go someplace else.
>
> THE COURT: What would you have them do at the other place?
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> MR. FARRIS: We would have two alternatives, either of which are fine by the families; one of

which is that a tutor come in and help them there in that separate time.

THE COURT: Tutor from the Plaintiffs or tutor from the government?

MR FARRIS: Either way by us is fine. Probably be better to have it from the government. We don't care. That's fine by us. But we would supply it too, if they wanted us to, if they premitted [sic] us to. The other alternative is just let the child simply have study hall during that time and let the parents teach the child reading at home at some other point in time. . . .

THE COURT: And that's what you're asking for?

MR. FARRIS: That would be one of the alternatives that would be acceptable to us, your Honor, yes, it would. (Mozert Record of Trial, 24 Sep. 1986, 87-88)

With the burden of proof on them, the defendants offered five arguments supporting the uniform use of the Holt series as the least restrictive means of achieving the state's compelling interests: (1) the destructive effect a separate text would have on the integrated nature of the curriculum and, coincidentally, the underlying intent of the plaintiffs to supplant the present public school curriculum with one of their own design; (2) the additional burden alternative texts would place on classroom teachers; (3) the potential fragmentation of the curriculum resulting from subsequent similar requests; (4) the negative effects of divisiveness and stigma resulting from the use of separate texts; and (5) the establishment clause problems raised in attempting to accommodate free exercise complaints in the public schools.

A total of six witnesses testified for the defense during the trial. Their identity is significant as much for who they were not as for who they were. Not called to testify were the past or current superintendents of Hawkins County schools (Snodgrass had been defeated for reelection in 1984), members of the school board, curriculum supervisors for the school system, administrators (especially Church Hill Middle School principal James Salley, who had permitted the use of alternative books for several weeks), or teachers who had instructed the plaintiff children in their classrooms.

Gay Grabeel, a seventh-grade teacher at Rogersville Middle School and the head of the textbook committee which had recommended adoption of the Holt series in 1983 (supra 99ff.), was called to testify on the textbook selection process and the Holt books. She had no firsthand experience, however, with any of the plaintiff students or their families. The other five witnesses were similarly lacking substantive knowledge of what occurred in Hawkins County's classrooms nearly three years earlier. They included: Dr. Robert Coles, professor of psychiatry and humanities, Harvard University; Dr. Roger Farr, professor of education and associate dean for research and graduate development, Indiana University; Dr. J. Gordon Melton, director of the Institute for the Study of American Religion, University of California at Santa Barbara; Dr.

Robert L. McElrath, Tennessee's state commissioner of education; and Faye Taylor, director of elementary education for the State of Tennessee.

What these witnesses offered was expert testimony relative to their fields of knowledge. But no defense witness provided empirically derived data from the schools where the plaintiff children had been enrolled. As a result, the degree of curriculum integration in the classrooms, the additional teacher workload required by use of alternative textbooks, and plaintiff-student progress during the period when the alternative books were in use, all issues raised by defense counsel to buttress their arguments, nonetheless lacked supporting evidence.

Farris attacked this omission in his final argument:

> In the matter of proof in this area, where are the teachers that did this for six to eight weeks with the Plaintiffs' kids in the Church Hill Middle School? None of them came into Court and said, yeah, we had these kids in our room and we gave them assignments, and boy, this was really a hardship on us. They didn't come into this Court and say anything like that. They didn't come into this Court period. The Defendants didn't want to call them because the actual facts of what happened. . . . Mr. Salley didn't testify, and not only didn't they do it in Court, the school board didn't do it either. The school board didn't ask the superintendent, or Mr. Salley what was going on. And so if there was really a great burden for people, they would have proved it from the people that actually were doing it. No, they theorized the burden where one doesn't exist. (Mozert Record of Trial, 24 Sep. 1986, 23-24)

During the testimony of the defense witnesses and the summations by defense counsel, Judge Hull continued to probe

for some means of accommodation, some way, as he had described the problem, for the state to "achieve literacy and good citizenship for all students without forcing them to read the Holt series." He questioned Commissioner McElrath:

> Why is it impossible to let these . . . Christian objectors read out of the Open [Court] series book, and the rest of them read out of the Holt books, and the teachers teach out of both of them? Why can't that be done?
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> The Witness: I testified earlier that I think it's just very unfair to hold teachers accountable.
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> The Court: We're paying them to be accountable. . . . Why, other than being hard on the teachers, which I don't mean to be, but why can't they teach four students out of one book and sixteen out of another set of books? What would be the bad result, if any, to either the four or 16 if that's done and why would it not [effect] the cause and objectives of the State of Tennessee to do that?
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> The Witness: I think it would [affect] both groups relative to achievement scores because of the division of time. . . .
>
> The Court: What leads you to come to those conclusions . . . what facts do you have that would lead you to those conclusions? . . . Why isn't the cause of education advanced as well . . . or not impeded too much to recognize . . . these peoples sincerely held religious [beliefs] which everybody here stipulates they are? . . . [I]f you don't know, you can say so but I want to know what the answer is myself. That's the lawsuit.
>
> The Witness: My answer, Judge, is that we do have very standardized tests and the indicators we're now using that the public expects us to use, to see if youngsters are learning and in the last two years, achievement tests both basic skills and national achievement test and passing the high school proficiency test have shown dramatic improvements.

> The Court: But you haven't had the scenario -- How do you know it would change if you had two sets of books? . . .
>
> The Witness: I think common sense approach of effective teaching. (Mozert Record of Trial, 21 July 1986, 1244-47)

Still searching for reliable data, Hull asked Faye Taylor, the state's director of elementary education, if there had "been any studies by the Department of Education . . . to try to determine whether there could be an accommodation such as you suggested or any other accommodation for these people's uses?" Taylor replied that she didn't "know of any studies directly related to this position" (Mozert Record of Trial, 21 July 1986, 1390-91).

In his closing argument for the defense, Deputy State Attorney General William Farmer concentrated on establishment clause barriers to solving the less restrictive means problem. If the Court "orders us to change our system for anything other than a secular purpose," he warned, "it's going to violate the establishment clause." The available remedies that would avoid such a transgression, he suggested, were for the parents to "put their kids in a private school" or to "teach their kids at home." Hull challenged this reasoning:

> So what you are saying is that any time there is an objection to anything that the public schools does on religious grounds, even if there is an objection that's proper, there can be no remedy because anything you did would be a violation of the establishment clause?

The ensuing exchange provides an insight into the attitude of the defendants and their advocates toward the nature of the public school curriculum and also into their perception of the plaintiffs' objectives in the lawsuit:

> MR. FARMER: . . . What I'm saying is in this particular case the alternatives that they are suggesting, as I understand their alternatives, is to take the public school's basic core curriculum and modify it in some way, through a change in the reading program, or a change in the textbooks--
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> THE COURT: No, they're asking that five children be allowed to go to the library and be taught by somebody else out of a different book.
>
> MR. FARMER: Yes, sir, and in the course of doing that it has an effect on the curriculum, and the reason that we're singling these children out . . . is that we have an integrated curriculum there, is because of their religious beliefs. That is a non-secular purpose for that remedy. . . . We're talking about fundamentally teaching these children how to think, we're not talking about these other areas in which gym clothes, or ROTC programs can be modified without affecting their education. The philosophy of their education is what they're wanting to change, through a court order, based on their religious beliefs. And there's no way that that won't run afoul of the establishment clause.[56] (Mozert Record of Trial, 24 Sep. 1986, 73-76)

Dyk's final argument provided a review of the principal defense arguments against less restrictive means: the nature of the curriculum ("It's all integrated. If these people chose not to participate in the reading class, they

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[56]The reference to "gym clothes" and "ROTC programs" alluded to two court cases, Moody v. Cronin, 484 F.Supp. 270 (1979), which involved religious objections to participation in coeducational physical education classes, and Spence v. Bailey, 465 F.2nd 797 (6th Cir. 1972), which dealt with conscientious objection to mandatory participation in high school ROTC classes.

are missing things that are important to other courses."); the problem for teachers (If the Court's decision favors the plaintiffs, teachers will become "very, very nervous and you are going to make education less effective."); the psychological effects on the students (Making distinctions in the school curriculum because of religious differences "damages the public schools. . . . It is harmful because it brings religious divisiveness into the public school."); the possible consequences of the decision (". . . I think it is important to recognize that we are not just dealing with a few Plaintiffs here." Other Supreme Court decisions indicate "that this Court should consider the impacts of its decision elsewhere in this country, and more important, to consider the effect of its decision in the future."); and the establishment clause problems raised in attempting to accommodate the plaintiffs (The alternatives suggested by the families "raise very grave establishment clause problems.") (Mozert Record of Trial, 24 Sep. 1986, 51-65).

At one point Hull interrupted Dyk to raise the issue of parent rights versus state responsibilities as a new dimension to the question of less restrictive means:

> THE COURT: So do we have a situation here then where the parents have a right, at least to a certain age, to try to impose their beliefs on the children and teach them the way of their beliefs, whether the majority of people believes in their beliefs or not? On the other hand, you've got the school system trying to teach, well let's say neutrality . . . and you've got the religion on the one side, and the rights of the parents to teach their children and impose their religion on

them as they see it on the other side. How do you accommodate . . . such a right of a parent . . . and the public schools teaching the general public a broad base, neutral position . . . as far as religion is concerned? . . .

MR. DYK: . . . It is possible in this country to learn that other people differ with you without changing your own beliefs and agreeing with them.

THE COURT: Well, I think that's true, but is that true at age 5, 6, 7, 8, and 9, when you don't have any beliefs and you are in the process of being informed and inculcated . . . either by your parents who're saying one thing . . . and the school system of saying, well, things are kind of relevant, and we want to give you a broad base so you can agree with your parents later on or not.

MR. DYK: But they're not addressing . . . whether the children's beliefs are the appropriate beliefs or not. All the schools are saying is that here are these other people [in the selections in the Holt series] who believe something different. Now, Dr. Coles said . . . that's not . . . going to change a young child's beliefs, to know that somebody else believes differently.

THE COURT: That we could all, get a hundred people and get a different opinion on that, I guess.

MR. DYK: And it may be that the Plaintiffs don't agree with Dr. Coles, I take it they don't agree with Dr. Coles, but there's an alternative available to them in the school system. They don't have to go there.

THE COURT: Why should an alternative be available to these few that costs them $20,000 a year when the other alternative costs the general public nothing, or relatively nothing?

MR. DYK: I think it does . . . cost the general public a lot, in the sense that the objectives of public education are simply not being achieved as to these children.

THE COURT: Well, I understood you to say they don't have to go to the public schools, we offer them and you can take them or leave them, as long as you comply with the law by some other means,

> and that is the attendance law, and you can comply . . . by going to private schools, or taking the job yourself and teaching them the way you want to teach them. (Mozert Record of Trial, 24 Sep. 1986, 58-62)

As he concluded his remarks, Dyk appealed for recognition of the long-standing tradition of deference courts have given to school boards and school administrations in the day-to-day operation of their schools, contending that "those kind of judgements made here by the State . . . are entitled to substantial deference from the court system." Citing the policy of deference granted by the Supreme Court in other decisions,[57] he

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[57]The two Supreme Court decisions specifically cited by Dyk were Epperson v. Arkansas (1968) and Wisconsin v. Yoder (1972). In Epperson the court said:

> Judicial interposition in the operation of the public school system of our Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. (89 S.Ct. 270)

In Yoder the Court acknowledged that its decision

> in no way alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the "necessity" of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements. (92 S.Ct. 1543)

argued that "courts are not school boards or legislatures" and that they "are ill-equipped to determine the necessity of discrete aspects of the State's program of compulsory education." As a result, he continued, the record was "remarkably clear" that public education should be kept "the way it is" and not fragmented with "one course for one group of students, and another course for another group of students, the way the Plaintiffs would like to have it here" (Mozert Record of Trial, 24 Sep. 1986, 64-65).

In developing that part of his decision concerning least restrictive means, Hull observed that a uniform book was not required since the state approved several basic texts for adoption by local school districts and since it also permitted its compulsory education requirement to be fulfilled by attendance at private schools or through home schooling. Thus, he reasoned, "it is clear from the evidence at trial that the state's interest in uniformity is by no means absolute" (Mozert, 647 F.Supp. 1201). Then he addressed other defense arguments supporting use of the Holt reading series.

Insofar as an integrated curriculum was concerned, Hull recalled that "many of the expert educators who appeared at trial indicated that teaching is best accomplished through individualized instruction" (Mozert, 647 F.Supp. 1201).[58]

[58]Hull possibly had in mind here the cross-examination of Dr. Roger Farr. In order to discredit defense insistence on the need for the single textbook series and its place in

an integrated curriculum, Farris read passages from a book, Teaching a Child to Read, coauthored by Farr and Dr. Nancy Roser (Harcourt, Brace, Jovanovich, 1979):

Q: Dr. Farr, I want to just read you passages out of your book, and ask you one question and one question only. I don't want any comments, I just want to know, did you write that. . . . "Gone, too, are the static groups of Sparrows, Bluejays, and Robins. More likely, today's teacher has assessed the reading skill of each child, and by taking the child's interests and background into account, has designed a reading program for the child, regardless of how the child compares with others in the class. Sometimes the teacher meets with all the children in a group, often however, the child reads alone to the teacher. All of the children are not reading from the same book, it is less likely that a story is read by the fast group while a slower child is waiting to get that far." Did I read that correctly? . . .

The Witness: Yes, he read it accurately. . . .

Q: . . . "Parent interview[s] frequently uncover concerns the parents would like to discuss and these may explain pressures on the child or cue the teacher to concealed problems. The teacher who establishes rapport with parents cements the key approach to learning and opens channels for further communication throughout the year." Did I read that correctly? . . .

A: Yes, you did. . . .

Q: . . . "One of the two tenets of teaching is that learners and programs will vary markedly." Did I read that correct[ly]?

A: Yes, you did.

Q: . . . "No one knows for certain how to determine the ways in which children learn best, learning styles may be as diverse as the children themselves nor does reading research seem to support any one prescribed sequence of skill development activities. . .

The use of alternative texts, Hull agreed, "would require additional preparation by existing teachers or the hiring of part-time tutors." On the other hand, he believed that this could be accomplished "without substantially disrupting the education process and without substantially inconveniencing either the plaintiff-students or the rest of the student body" (Mozert, 647 F.Supp. 1202). He also noted that one experienced Hawkins County elementary reading teacher called by the plaintiffs had

> testified that she not only divides her reading class into two or three groups by reading level, but that she always uses additional texts and materials other than the basic reader. As much as possible, she works with the students on their individual reading level. . . . (Mozert, 647 F.Supp. 1201n)

Nor did Hull believe the student-plaintiffs had suffered educationally while using an alternative reader. The material presented during the trial, he wrote,

---

> . Provision for individuals is the strongest impetus for extending your efforts. . . ." Did I read that correctly?
>
> A: You left out about twice but other than that it was correct. . . .
>
> Q: . . . "Individualized instruction does not mean the same thing as . . . each one teach one. Rather individualizing your instruction will mean that you are dedicated to the idea that children are different and that to the extent you are able, you will provide for those differences." Did I read that correctly?
>
> A: Yes, you did. (Mozert Record of Trial, 22 July 1986, 1487-1500)

> demonstrated that accommodating the plaintiffs is possible without materially and substantially disrupting the educational process. . . . The students at the middle school were provided with an alternative reading arrangement for a period of several weeks. There was no testimony at trial that those arrangements resulted in any detriment to the student-plaintiffs. (Mozert, 647 F.Supp. 1201; cf. supra 203-4)

Hull acknowledged that the threat of similar requests in the future was "a very legitimate concern" but seemed "unlikely to occur" due to the "relatively homogeneous" religious composition of Hawkins County. "Accommodating the beliefs of the small group of students involved in this case," he felt, "probably would not wreak havoc in the school system by initiating a barrage of requests for alternative materials." The implications of a decision in favor of the plaintiffs that so worried the defense were genuine concerns, he admitted, but the Court "must also limit its decisions to the facts of the case before it" (Mozert, 647 F.Supp. 1202).

Having previously found that the plaintiffs' religious beliefs were burdened by the state's requirement to use a single text, Hull concluded that "the proof at trial overwhelmingly supports" the finding that the compelling state interest did not justify this burden. "Accordingly," he ruled,

> the Court FINDS further that, while the State of Tennessee has a compelling and overriding interest in the education of its children and the literacy of its citizens, this interest can be accomplished by less restrictive means. The uniform, compulsory use of the Holt series in the Hawkins

> County public schools is by no means essential to furthering the state's goals. (Mozert, 647 F.Supp. 1202)

The opt-out solution. The remaining problem for Hull was to mandate some remedy which would relieve the plaintiffs' burden without, as defense counsel had warned, violating the establishment clause. Agreeing with defense contentions that no one book or series of books would probably be acceptable to the plaintiffs and taking note of Tennessee's home-schooling statute, he devised a solution for which there had been intimations as he had questioned witnesses and counsel from the bench: the children would be permitted to opt out of reading but would remain in public school for the rest of their classes. "As the Court envisions the opt-out program," Hull wrote,

> each of the student-plaintiffs would withdraw to a study hall or to the library during his or her regular reading period at school and would study reading with a parent later at home. The home schooling portion of the child's education would be proportionally subject to the provisions of the statute. . . . The child's reading proficiency would be rated by the standardized achievement tests used by the state. If deficiencies develop, the parents and school officials should confer to facilitate improvement. The Court finds that these children are bright and capable of completing such a program without serious detriment to their reading skills or citizenship. The specifics of this program will best be developed by the professional educators and the parents.
>
> The home schooling opt-out does not contravene the Establishment Clause. There is neither state sponsorship, financial support, nor active involvement of the sovereign in religious activity. (Mozert, 647 F.Supp. 1203)

Hull then enjoined the defendants "from requiring the student-plaintiffs to read from the Holt series" and ordered them "to allow the student-plaintiffs to attend the Hawkins County public schools without participating in the course of reading instruction." He required the parents to keep the school authorities notified in writing "of their intent to provide home school reading instruction." During reading class the students were to "be excused from the classroom and provided with suitable space in the library or elsewhere for a study hall. No student shall be penalized for exercising this option" (Mozert, 647 F.Supp. 1203).

Judge Hull's subsequent observations on his decision offer added insight into his understanding of his task, given the proof at trial and court precedents:

> [T]here was absolutely nothing in the state's proof that indicated a compelling state interest in teaching from the Holt series. It was evident that the state's legitimate interest in the education of its children could be met by instruction from other books, by instruction in private or religious schools, or by home instruction. The state simply could not offer any proof that would justify forcing seven children to read from the Holt series or forego a free public education. In other words, the plaintiffs had proved that they were entitled to relief.
>
> The problem for the Court was to fashion a type of relief that would not require the state to provide separate classes or textbooks--(Almost certainly this would have resulted in a violation of the establishment clause--) but would protect the plaintiffs' right to free exercise of their religion.
>
> What the plaintiffs had originally asked for was separate texts and separate reading classes. The relief they received was the right to opt-out

> of reading classes altogether and learn reading at home without forfeiting the right to take the other classes offered in the public schools. The only accommodation the schools needed to make was to allow the children to withdraw to a library or study hall during the regular reading class. The burden on the parents was considerably greater. All families wishing to take advantage of the opt-out procedure were required to submit written notice to the school system of their intent to provide home reading instruction in accordance with state law. Children receiving home schooling in reading were required to submit to regular, standardized achievement tests offered to the other students in their group, to ensure that they were progressing with their reading skills. The parents, of course, had to accept the obligation to instruct their children if they wished to shield them from the content of the regular elementary school curriculum.
>
> It must be emphasized that the Court found no fault with the Holt Rhinehart [sic] Winston series and required no modification in the school curriculum, which could be considered a censorship of ideas. (Hull Speech)

Public Reaction

Judge Hull announced his decision in favor of the seven fundamentalist families on 24 October 1986. At a hearing less than two months later he awarded them slightly more than $50,000 in compensatory damages. Although a few voices were raised in support of these actions, the overwhelming reaction was one of condemnation and demand for appeal. Rather than confirming individual free exercise rights under the First Amendment, the decision was viewed as threatening chaos to the public school curriculum, handing religious conservatives a major victory in their ongoing attack on public education, and offering a precedent for further

judicial interference in the day-to-day operation of local schools.

Local response. To Hawkins Countians Hull's decision represented all of this and more. It was a challenge to the status quo, to local relationships and the time-honored way of getting things done. It was the intrusion of outside "agendas," represented by Concerned Women for America, into local affairs. And it was a test of the viability of public education, with their schools the surrogate for school systems across the nation.

Harold Osborn remonstrated:

> I just can't see how his opinion accomplished anything other than lay a groundwork for an appeal. A decision had to be made, so he made it, and, far as I'm concerned, he could've flipped a coin. . . . 'Course, he had to write an opinion but he flipped it and it landed on its edge. He was tryin' to accommodate them. And . . . I have no problem with accommodation. And if I had believed that that is all that these people wanted was simply to have their children read an alternate textbook and that they would've stopped there, I would have been lobbyin' the school board, "Aw, come on, let 'em have it. It's not gonna make any difference." But that was the toe in the door. That's all it was. I've seen and read too much about the national right wing agenda to be fooled by their protestations of locality. . . . Maybe I'm wrong. Let me back up a minute. . . . Maybe Tom's opinion did help. Because it sure galvanized support [for our side].

A while later in the conversation, Osborn returned to the subject:

> But when the decision came down, it mobilized them [the county residents] too. In fact, after Tom Hull's decision, I had people come up to me on the streets. I bet you there was twenty-five to

> fifty people came up to me. A lot of 'em I didn't even know. A lot of 'em I knew and knew they had not been involved. Not that they didn't care, but they just hadn't done anything. Come up to me and say, "What in the world can we do? Is there anything that I can do? Anything that we can do to overturn this? Any way we can get Tom Hull out of that job over there?" They were ready to fire Tom Hull. It mobilized 'em.

County educator Jim Sharp felt the opt-out solution

> would have been impossible. . . . The way Judge Hull laid this out for us to abide by, I think it would have been impossible. . . . First of all, I think if he was going to allow these children to have home school for reading, he should allow 'em to have had home school for everything. . . . It's impossible for us to furnish personnel for a child who is not going to be in a reading class, to be placed in another room and supervise 'em. We don't have that kind of personnel here in the county. . . . There's no way we can do that. So I think it was a mistake for him to ever say, "Allow 'em to have home school training for reading purposes."

Clay Bowers confessed that his

> first reaction was surprise. I didn't think they would win in his court. He had always seemed to be somewhat . . . not hostile, but there was some animosity there that seemed to be between him and Farris and the plaintiffs. So I was surprised at the decision. . . . When I read the decision, I was pleasantly pleased with what I thought was his backgrounding of the decision, of his references to previous cases. . . . But I thought his interpretation was good, his idea of accommodation, and then clearly recognizing that the school board attorneys and the state attorneys admitted these were truly held religious beliefs, which made it easier for him to make a decision on behalf of the plaintiffs. So I thought he put down some good case law in reference and then some good ideas on accommodation for these students.

But in spite of his upbeat analysis, Bowers was skeptical of the opt-out solution which Judge Hull mandated. That measure, he felt,

> sounded like an administrative nightmare. Honestly. The accommodation sounded good. The opt-out, I would hate to be a school teacher that would have to implement it. . . . But if that opt-out part stands, soon you've got children opting out of everything. . . . And it would become such an administrative nightmare, knowing when students are supposed to be in school, when they're supposed to be at home. . . . I think either you're home schooled or you're public-education schooled or you're private schooled. Mixing the three would seem very awkward to me. . . . I think that public education could make some accommodations there at the schools. I don't know how. I'm not an educator. And even that presents, I'm sure, an administrative problem.

Some of the larger regional newspapers agreed with these objections. In an editorial approximately two weeks after the decision, the Kingsport Times-News wrote that the nation's public schools were "under attack," aided in part by Hull's decision. "In the extreme," it complained,

> Judge Hull's ruling could be applied to practically everything that is taught in the schools and even how it is taught. If the ruling is allowed to stand, it not only is possible but probable that our system of public education will be decimated. . . .
>
> We look for the appeals process to right what we think is the wrong in Judge Hull's verdict: an open invitation to everybody and anybody to pick and choose which parts of the public school curriculum they will accept, and which they will reject. ("Opinion: Nation's Educational System Under Attack," 9 Nov. 1986, 10A)

An editorialist for the Knoxville News-Sentinel was similarly concerned about the effects of the ruling on the education system and its students. Apparently failing to appreciate the irony of the remarks, the writer observed:

> What is equally disturbing about the ruling is the challenge to a basic tenet of education--the

> interplay of ideas among students. This includes trying to understand and appreciate the views of others, even though we may not agree with their religion or have no desire to emulate their culture. In a world festering with religious and racial hatred, we need this understanding today as much as we ever did. . . .
>
> We do not achieve that understanding by removing some children from the classroom.
>
> If Hull's ruling stands, school boards and textbook committees likely will find themselves seeking reading books which offend no one instead of adopting those which challenge students' imagination and develop their intellect. . . .
>
> The kind of public education that may result would benefit no one. Children especially will be the losers. ("Comment: Children Could Be Losers," 31 Oct. 1983, A16)

Hawkins County's only newspaper, however, took a position contrary to these larger papers and to most of its readers:

> The lawyers have screamed, the press has wailed but few seem to have really considered the wisdom in Judge Thomas Hull's opinion of the infamous Hawkins County textbook case. Certainly, the decision is a victory for the fundamentalist parents but the schools have not lost all.

Then, after quoting segments of the decision, the editorial concluded, "We think the decision is a victory for wisdom" ("Editorial: Look at Text Ruling, Not All the Rhetoric," Rogersville Review, 30 Oct. 1986, A2).

Following the damages hearing both the Greenville Sun and the Rogersville Review attempted to pour oil upon the local waters by calling public attention to and praising the "restraint" and "principles" of the plaintiffs. "To their credit," the Greenville Sun observed in an editorial,

> the plaintiffs asked for an amount of damages equal only to the expenses they could document as being clearly related to the Board of Education's decision to expel the plaintiff-children from the public schools. . . .
>
> There had been earlier speculation by some that the plaintiffs would ask for a much larger settlement, reflecting compensation for the "pain and suffering" they had experienced in Hawkins County as a result of their unpopular stand. It appears that there has been a good deal of that kind of "pain," but the plaintiffs chose not to leave any question that they might have brought their case out of a desire to make money. They wanted the issue to be clearly one of principle, they said, and they made that point well by their restraint. ("Hawkins Case Moves Along," 17 Dec. 1986, 2)

The Rogersville Review agreed. Referring to the damages awarded, it concluded,

> We can't call that taking the school system to the cleaners. The amount represents just a fraction of the schools' annual budget and they do have insurance. . . .
>
> The case has been called precedent setting. Well, we agree especially when one considers the precedent set by these Christian parents who showed us their principles and rights are more valuable than money. ("Editorial: They Pursued Principles, Not Money," 18 Dec. 1986, A2)

National press criticism. Across the nation syndicated columnists and editorial writers for major newspapers attacked Hull's approach to the case and cast its consequences for America's public schools in dark terms. But the decision had a curious effect on the far right. While religious constituents applauded the results, conservative columnists James J. Kilpatrick and George Will found cause for alarm. Part of their concern resulted from

the administrative and academic "chaos" they believed the ruling would bring into the schools. But primarily they objected to the "judicial activism" with which they believed Judge Hull had resolved the case. For example, Kilpatrick foresaw "something approaching chaos in both elementary and secondary education" if the decision was upheld throughout the appeals process. With regard to Hull's judicial methodology, he lamented, "This won't do. It won't work. Federal Judges were not meant to be school superintendents or textbook censors. Hull's ruling opens a bleak vista of litigation stretching into infinity . . ." ("Puree of Textbook," Washington Post, 30 Oct. 1986, A27). Will likewise predicted that "chaos must result when parents are invested with a right to fine-tune their children's cooperation with a public school curriculum" and he condemned as "pernicious" a "conservative judicial activism" which he considered capable of producing "judicial supervision of American life far more intrusive than anything liberal activism has achieved" ("Tailored Textbooks," Washington Post, 9 Nov. 1986, H7).

Those writers with more liberal views were equally dismayed. According to columnist Richard Cohen, the decision would neutralize the curriculum and thus be extremely detrimental to the youth of the nation. Charging that Hull had "caved in to the parents," Cohen reasoned that "the schools have been ordered to lend their authority to

the propagation of ignorance," and the issue had consequently been transformed: "The issue, we are told, is religious rights. Yes, but it has been settled in a way that changed it: now it's child abuse" ("Propagating Ignorance," Washington Post, 31 Oct. 1986, A27). Oakland (CA) Tribune publisher and syndicated columnist Bob Maynard believed that the decision, if it survived on appeal, would cause American public school classrooms to "become more varied in their offerings than cafeterias," and the "common ground" which they have provided "for instilling our values, will instead sink to offering the least offensive material" ("Textbooks: Why Do the Faithful Rage?" Knoxville Journal, 31 Oct. 1986, A13). And the Washington Post charged in one of its editorials that Hull's decision, along with "a similar textbook suit" in Mobile, Alabama, held "very destructive" implications for education and the nation. Like the Knoxville News-Sentinel, the Post apparently failed to detect the irony of its position as it argued that

> public schools are charged not only with teaching students the three R's but with instilling respect for diversity. That is not a religion but a principle on which Americans must agree in order to live peacefully in a pluralistic society. And the public schools have not only the right but the obligation to teach it. The plaintiffs' logic in these cases, if followed, would end the teaching of tolerance and destroy the common ground on which this country is based and which has been its greatest strength. ("'Secular Humanism' and Schools," 28 Oct. 1986, A14)

Press credibility. In the coverage of highly controversial events and topics there frequently arises a

question of press credibility. Are reporters presenting factual data in a reasonably balanced manner? Or are they interpreting the issues either to conform to their personal attitudes or to appeal to the opinions of the majority of their readers? Following the "Golidlocks incident" (supra 132-38), the parents began to believe that much of the press coverage did not accurately represent their position.

In a study prepared for Ohio University's Scripps School of Journalism, Mary L. Moylan investigated the press coverage of Hawkins County's textbook controversy. She concluded that, "although the picture of this case is incomplete due to the unavailability of certain key media people, it is clear that the coverage of this trial was substandard."

Two Washington Post writers whom Moylan was able to contact were Richard Cohen and Judy Mann. They had prepared "two of the most vitriolic commentaries on the case" and both had "obtained their information secondhand." Based on this and other evidence, Moylan found that as a general practice, heavy reliance had been placed on wire service material and "therefore, any inaccuracies on this level were perpetuated further up." "It is ironic," she noted,

> that due to this incomplete information generated at the source, the editorial people did not know that much of what they wrote was actually in agreement with the parents. Both wanted the common body of cultural and societal mores and values transmitted to their children. The difference was that the editorials assumed that this was being done while the parents were saying

that it was not--that opposing values and more were being taught.

Moylan attributed what she regarded as poor press coverage to five factors:

(1) "The structural constraint of lack of time to investigate thoroughly and clarify the issues before deadlines. . . ."

(2) "The desire of some editors for catchy and interesting headlines and stories. . . . 'Goldilocks on Trial' is certainly more interesting than 'Parents Charge Schools Biased.'"

(3) "A bias toward the plaintiffs as fundamentalist Christians. . . ."

(4) "[T]he growing problem of newspeople receiving much of the information they use from partisan groups."

(5) "Pack journalism may have been to blame. . . . The more that certain facts were reported, the more the media believed it themselves and felt no need for verification. This set up a vicious circle that continued the spiral of error." ("Misreporting the News: A Case Study of the Tennessee Textbook Case." A copy of this unpublished paper was provided to the author by Mike Dye, reporter for the Kingsport Times-News.)

An editorial which appeared in the Greeneville Sun[59] supported Moylan's conclusions:

> Despite the hundreds of stories that must have been written or broadcast about the situation, we have run into indications that many people who have read or heard these stories don't seem to have a clear idea of just what is at trial here. . . .
>
> From various sources, we have heard it described as an attempt to "ban" books from the

[59]Bob Mozert believed that the Greeneville Sun "did a more accurate job than anyone" in reporting the controversy and trial (Mozert Interview).

> Hawkins County school system. It has been portrayed as a pure-and-simple censorship case in several places. . . . Lewis Grizzard wrote a column indicating the case involved Greenevillians; he seemed unaware of Hawkins County. Richard Viguerie, a conservative columnist, praised the case as an attempt by the plaintiffs to have creationism taught as a alternative theory to evolution in the Hawkins County schools. . . .
>
> Our point is that the case seems to be less understood the further away you get from East Tennessee. We suspect there are two main reasons for this: 1) it is harder for reporters to gather data across great distances, and 2) there are ideological groups backing both sides of the case who tend to present their side clearly and the other side vaguely. That is their right, of course, but it tends to muddy the waters sometimes. We hate to say it, but there might be a third reason, too: a tendency among some reporters to see the case as unworthy of serious and professional treatment, including scrupulous fairness in the way both sides are presented. ("Why Are Facts So Garbled?" 24 Sep. 1983, 2)

Academic community reaction. One of the communities dependent on press coverage to help interpret the meaning and consequences of Hawkins County's controversy was that of educators. Like columnists and editorialists, they tended to be sharply critical of Hull and his ruling, and often for the same reasons. Particularly, they objected to what they considered the interference of the judiciary in a traditionally local political process which was democratically responsive to the will of the community's majority. Changes, they contended, should be effected through this political process and by efforts to realign the

majority, not by judges insulated from local attitudes and values.

Secretary of Education William J. Bennett acknowledged a degree of sympathy for parents who complain about textbooks. Nevertheless, he expressed strong opposition to judicial activism in public education and particularly to the opt-out decision that had resulted in this instance. "I do not think judicial intervention is the right course, the right solution," Bennett explained. ". . . We should not substitute judges for the community. Education policy should be made by the community, school boards and elected officials." Calling the opt-out solution a "mistake," he added that

> the effort to achieve a consensus in what should be taught, particularly in the area of values, should not be undercut by allowing people to opt out of discussions of these things if they have disagreements with this or that. (Lee Mitgang, "Bennett Criticizes Textbook Ruling," Greeneville Sun, 31 Oct. 1986, 1,7).

The president of the District of Columbia's board of education agreed with Bennett that such matters should be left to educators and the political process:

> Perhaps it is time to offer some advice to the learned judges of our federal system: decisions about curricula and textbooks are best left to the elected or appointed school boards. When citizens no longer agree with the positions taken by members of the board, they must vote them out of office and elect new members who espouse the values of their community. . . . The ballot box, not the courtroom, is a better place to resolve local differences over the kind of education we provide for our children. (R. David Hall, "'A

Holistic Educational Experience,'" Washington Post, 9 Nov. 1986, H8)

Lawyer David H. Remes wrote in Education Week that "Judge Hull's analysis is wrong in every respect," because

> he misperceived the nature of the public 'benefit' involved, the nature of the 'burden' imposed by the Tennessee authorities, the nature of the state interest involved, and the pitfalls in the opt-out alternative that he embraced.

In Remes' view, education "is 'public' because it is a kind of education." He defined that particular "kind" as one which conveys "a heritage of tolerance and diversity" rather than one engaged in instructing "children in the orthodoxies of their parents." If parents choose to send their children to public school, then their only recourse, provided they have "legitimate" dissatisfactions with the curriculum, "lies in persuading the school board to make changes." On the other hand, "the state has a compelling interest in being able to define the curriculum in its schools, free from judicial interference at the behest of irritated parents." But the overarching question, according to Remes, was not the restrictive means test. Rather, "the question was whether the courts have any business telling a state how to instruct its children in our 'common heritage.' The answer to that question is clearly 'no.'" The opt-out program "is a prescription for disaster," which will lead to "educational fragmentation and religious censorship." Remes concluded that

> the existing climate must change. Fundamentalist parents must realize the disservice that they are doing to their own children--and the harm they are doing to public education generally--in demanding a public-school curriculum that gives them no offense. They must come to understand that the public schools cannot teach their religious beliefs. ("Commentary: Opting Out of Reading Class in Tennessee: 'Wrong in Every Respect,'" 3 Dec. 1986, 24, 19)

Addressing the 1987 Danforth Foundation Seminar for Federal Judges, Louis Grumet, the executive director of the New York State School Boards Association, asked the members of his audience to question themselves

> whether it is truly possible for the types of religious-based objections to the curriculum which the parents in these [the Hawkins County and Mobile, Alabama] cases raise, to be accommodated by the public school system without, at the same time, gravely weakening the diversity and structure of our present educational system.

To Grumet the answer was unequivocally no. In the opinion of the members of his organization, he explained, "it is clear that the parents' objections are incompatible with the philosophy of public education in general and are also inconsistent with generally accepted methods of teaching reading." Perhaps like some of the editorial writers, Grumet did not realize the irony contained in his remarks as he continued,

> Major objectives of public education are to prepare each child to be a useful, thinking, discerning citizen of the state and the nation, and to develop the skills necessary to be a good citizen. We, who are involved in public education, encourage students to consider moral questions, to think critically, to make independent moral judgments, and to be autonomous

> individuals who can make their own judgments about moral questions.

The opt-out solution proposed by Judge Hull, Grumet maintained, would have serious negative consequences on both the child and on the education process. "[I]f we as public educators are forced to abandon the educational theories which our present educational system is founded upon," he suggested, "the education of all children will suffer." Additionally, schools will not be able to evaluate children who are opting out of a portion of the curriculum and "the learning environment for the child's peer group will be changed and weakened." In sum,

> if a parent objects to the values that are injected into the public school curriculum but nevertheless chooses to send his child to the public schools, there is essentially no way to accommodate his objection and at the same time fulfill the state's goals and objectives in educating the child. (Louis Grumet, "Religion - the Schools and Curriculum," Danforth Foundation Seminar for Federal Judges, St. Charles, IL, 12-15 Nov. 1987. Copy provided to the author by Knoxville attorney Margaret Klein.)

People for the American Way opposition. PAW attacked the decision with a barrage of letters, press releases, and interviews, all condemning Hull's action. Typical of these was a letter which PAW president Anthony Podesta sent to organization supporters. In it he announced that "we were handed a devastating loss last month. The judge presiding over the so-called 'Scopes II' trial ruled in favor of the Religious Right." According to Podesta's assessment,

> This one judge, with the help of the Religious Right has created a horrible situation, forcing public schools to become "revolving doors." If this decision indeed becomes "the law of the land," each child could be interviewed and pegged into religious "categories" and "subsets," and shuttled in and out of classrooms depending on the day's lesson. (From a letter to Milton M. Klein from Anthony T. Podesta, dated 25 Nov. 1986, copy provided to the author by Margaret Klein.)

Hull's response. Hull acknowledged the "very hostile reaction" to his decision without referring specifically to the issue of judicial activism. But he observed that "constitutional issues are almost invariably raised by unpopular people": those accused of crimes who take refuge behind the Fifth Amendment; the civil rights actions arising from convicted felons claiming Eighth Amendment protection; or those invoking First Amendment guarantees of free speech in order to advocate "highly unpopular viewpoints."[60] Similarly he suggested there was this free exercise problem which had been raised by the Hawkins County parents, "a highly vocal minority of fundamentalist Christians whose views were so atypical of the majority viewpoint that no text on the state's approved list would have satisfied them." On the other hand, Hull noted,

> . . . federal judges are not in a popularity contest. And constitutional claims always involve protecting the few against the rule of the many. Because my ruling succeeded in protecting the

---

[60]A more recent example of "unpopular people" raising "highly unpopular viewpoints" was the flag-burning issue which culminated in the Supreme Court decision Texas v. Johnson, 109 S.Ct. 2533 (1989).

> plaintiffs, without involving the defendants in any form of state entanglement with religion, I believe it was right and it will be upheld. But, even if it is reversed, I think much good will come out of the trial, the public airing of ideas, and the healthy debate that has surrounded the case. (Hull Speech)

Appellate Reversal

Contrary to Judge Hull's prognosis, the Sixth Circuit Court of Appeals overturned his decision on 24 August 1987, but the "public airing" and "healthy debate" that he had applauded was continued within the three-judge panel as it was elsewhere. Although the members of the Court concurred that Hull's decision should be overturned, the reasoning by which they arrived at their conclusions followed different paths. As a result, each judge filed an opinion.

Chief Judge Lively. In presenting the opinion for the Court, Chief Judge Lively never went beyond the question of burden on the free exercise of the plaintiffs' religious beliefs. Referring to the Supreme Court's Sherbert and Thomas decisions, he held that "the district court erroneously applied decisions based on governmental requirements that objecting parties make some affirmation or take some action that offends their religious beliefs"[61]

[61]Both of these decisions, it will be recalled (supra 243-44), involved denial of unemployment compensation benefits, or rather, made eligibility for such benefits contingent, in Sherbert's case, upon accepting work on the Sabbath, and in the case of Thomas, upon willingness to work in an armaments plant.

(Mozert v. Hawkins County Bd. of Education, 827 F.2d 1065 [6th Cir. 1987]). To these two cases Lively added a third, Hobbie v. Unemployment Appeals Commission of Florida, 107 S.Ct. 1046 (1987), in which the Supreme Court "reaffirmed its holdings in Sherbert and Thomas, emphasizing that in both cases there was compulsion either to do an act that was prohibited by the plaintiff's religion or to modify his or her behavior and violate religious beliefs." If there is no compulsion, Lively reasoned, there is no burden on the free exercise of religion, and

> that element is missing in the present case. The requirement that students read the assigned materials and attend reading classes, in the absence of a showing that this participation entailed affirmation or denial of a religious belief, or performance or non-performance of a religious exercise or practice, does not place an unconstitutional burden on the students' free exercise of religion. (Mozert, 827 F.2d 1065)

Reading the required textbooks, in other words, did not constitute "compulsion," and "exposure" to their contents did not burden the free exercise of their religion:

> It is abundantly clear that the exposure to materials in the Holt series did not compel the plaintiffs to "declare a belief," "communicate by word and sign [their] acceptance" of the ideas presented, or make an "affirmation of a belief and an attitude of mind." (Mozert, 827 F.2d 1066)

"Having determined," Lively concluded,

> that no burden was shown, we do not reach the issue of the defendants' compelling interest in requiring a uniform reading series or the question, raised by the defendant, of whether awarding damages violated the Establishment Clause.

As a result, he ruled that "the judgment of the district court granting injunctive relief and damages is reversed, and the case is remanded with directions to dismiss the complaint" (Mozert, 827 F.2d 1070).

Judge Kennedy. Although agreeing with Lively's analysis and conclusion, Judge Kennedy carried the reversal one step further, stating that, even if there were a burden (although she concurred that there was not), she would find that burden justified by the state's compelling interest in education. That compelling interest, she reasoned, was premised upon the state's responsibility to teach its students "about complex and controversial social and moral issues" as well as "inculcating in the students the habits and manners of civility"; in the need to prevent "disruption in the classroom"; and in the need to avoid "religious divisiveness" (Mozert, 827 F.2d 1071, 1072). Moreover, the Holt reading program constituted the least restrictive means of satisfying this compelling interest (Mozert, 827 F.2d 1071).

Judge Kennedy was particularly critical of Hull's opt-out plan. It was, she determined, "inconsistent with the public schools' compelling interest in 'promoting cohesion among a heterogeneous democratic people'"; it "would result in a public school system impossible to administer"; and "the dismissal of appellee students from the classes would result in substantial disruption to the public schools." As

a result, she concluded, she "would reverse the judgment of the District Court for these additional reasons, as well as the reasons so well stated by Chief Judge Lively" (Mozert, 827 F.2d 1072, 1073).

Judge Boggs. By a circuitous route Judge Boggs arrived at the same decision to overturn Judge Hull's ruling as had his colleagues. Prefacing his opinion with some professional and personal views, he pointed out that

> this is not a case about fundamentalist Christians or any particular set of beliefs. It is about the constitutional limits on the powers of school boards to prescribe a curriculum. For myself, I approach this case with a profound sense of sadness. At the classroom level, the pupils and teachers in these schools had in most cases reached a working accommodation. Only by the decisions of higher levels of political authority, and by conceptualized presentations of the plaintiffs' positions, have we reached the point where we must decide these harsh questions today. (Mozert, 827 F.2d 1073)

Boggs then proceeded to separate himself from the reasoning of Lively and Kennedy, first by disagreeing

> that the plaintiffs object to any exposure to any contrary idea. I do not believe we can define for plaintiffs their belief as to what is religiously forbidden to be so comprehensive. . . . A reasonable reading of plaintiffs' testimony shows they object to the overall effect of the Holt series, not simply to any exposure to any idea opposing theirs. (Mozert, 827 F.2d 1074)

Next, he found Chief Judge Lively's "conclusion based on its reading of the record to be unsatisfactory on the factual basis of what was said at the trial." Specifically, he

explained, the plaintiffs' claims for redress should not be misrepresented:

> Thus, I believe we must take plaintiffs' claims as they have stated them--that they desire the accommodation of an opt-out, or alternative reading books, and no more. That is all they have ever asked for in their pleadings, in the arguments at trial and in appellate briefing and argument. (Mozert, 827 F.2d 1075)

Third, Boggs disagreed "that there can be no burden here because there is no requirement of conduct contrary to religious belief" (Mozert, 827 F.2d 1076). He also took issue with Judge Kennedy "that such a teaching of 'critical reading' would constitute a compelling state interest which entitles the school board to deny plaintiffs the accommodation they seek." Referring to the defendants' neglected evaluation of the students while they were being accommodated and expert testimony concerning the alleged difficulties involved in evaluation, Boggs observed that

> it seems to me to be extremely difficult, not to say unfair, to rest a compelling state interest on the asserted failure of plaintiffs to learn something which defendants are apparently unable to define and unwilling to test for. (Mozert, 827 F.2d 1077)

The issues that needed to be addressed, he argued, were:

> (1) whether compelling this conduct forbidden by plaintiffs' beliefs places a burden on their free exercise of their religion, in the sense of earlier Supreme Court holdings; and (2) whether within the context of the public schools, teaching material which offends a person's religious beliefs, but does not violate the Establishment Clause, can be a burden on free exercise. (Mozert, 827 F.2d 1078)

Although Boggs believed that, by common sense evaluation, there was a burden on the plaintiffs' religious beliefs, he felt that "the key fact is that the [Supreme] Court has almost never interfered with the prerogative of school boards to set curricula, based on free exercise claims." The only counterevidence he could find was Barnette,[62] and here, he noted, "a specific affirmation was required, implicating a non-religious First Amendment basis, as well" (Mozert, 827 F.2d 1079).

As Boggs analyzed the situation then, he concluded that, "on the present state of constitutional law, the school board is indeed entitled to say 'my way or the

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[62]West Virginia State Board of Education v. Barnette, 63 S.Ct. 1178 (1943). This was a free exercise case originated by a group of Jehovah's Witnesses whose children had been expelled from public school because they refused for religious reasons to participate in a state-mandated daily classroom salute and pledge to the American flag. In his opinion for the Court Justice Jackson wrote:

> Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether non-conformist beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

The court failed to find this power as it ruled that "the action of the local authorities . . . transcends constitutional limitations on their power and invades the sphere of intellect and spirit . . ." (63 S.Ct. 1183-84, 1187).

highway'" (Mozert, 827 F.2d 1074). "A constitutional challenge to the content of the instruction," he reasoned,

> . . . is a challenge to the notion of a politically controlled school system. Imposing on school boards the delicate task of satisfying the "compelling interest" test to justify failure to accommodate pupils is a significant step. . . . I do not see that the Supreme Court has authorized us to make such a requirement. . . .
>
> Therefore, I reluctantly conclude that under the Supreme Court's decisions as we have them, school boards may set curricula bounded only by the Establishment Clause. . . .
>
> It is a more difficult question when, as here, the state presents materials that plaintiffs sincerely believe preach religious toleration of religions by consistent omission of plaintiffs' religion and favorable presentation of opposing views. Our holding requires to put up with what they perceive as an unbalanced public school curriculum, so long as the curriculum does not violate the Establishment Clause. . . .
>
> . . . I believe that such a significant change in school law and expansion in the religious liberties of pupils and parents should come only from Supreme Court itself, and not simply from our interpretation. It may well be that we would have a better society if children and parents were not put to the hard choice imposed by this case. But our mandate is limited to carrying out the commands of the Constitution and the Supreme Court.
>
> I therefore concur in the result and reverse the judgment of the District Court. (Mozert, 827 F.2d 1079-81)

Law Community Analyses

A plaintiff motion for an en banc hearing by the Sixth Circuit Court of Appeals was turned down on 5 October 1987. Nearly five months later, on 22 February 1988, the Supreme Court refused to grant a plaintiff petition for writ of

certiorari, thus bringing to a close the free exercise segment of the Hawkins County controversy's court proceedings.[63] But legal analysis of the case was just beginning. The number of law review articles which appeared on Mozert, either considering the suit alone or in conjunction with other religion-and-the-schools cases, offers an indication of the interest the district and appellate rulings generated. These articles also reflect the depth of disagreement among legal scholars concerning

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[63]Although its legal issues are not central to this study, there still remained, however, the appeals on Frost's false arrest suit. Nearly a year after the charges against Frost had been dismissed (supra 238n), she filed suit in federal district court, charging that her First and Fourteenth Amendment rights had been violated. Defendants in the suit included Snodgrass, Price, the arresting officer, Joe Ashbrook, and the Hawkins County Board of Education. Frost asked for damages of $100,000 against each defendant and for the Hawkins County School Board to

> be enjoined from depriving her of custody of her children, from seeking to have her arrested while on school premises, and from conspiring and assisting in attempts to impose prior restraint on expression of her criticism of the Board and its policies. (Frost v. Hawkins County Board of Education, 851 F.2d 825 [6th Cir. 1988])

In a jury trial presided over by Judge Hull a few months before the free exercise lawsuit went to court, Frost was awarded $70,000 compensatory damages. But on 12 July 1988 the Sixth Circuit Court reversed, saying, "We think Frost's claims that she was deprived of her freedom to express her opposition to the Board's policy and that she was deprived of the custody of her child without due process are without merit" (Frost, 851 F.2d 826-27). On 5 December 1988 the Supreme Court refused to grant certiorari, thus completing all legal proceedings dealing with the controversy. Frost confessed that "the false arrest trial was the most grievous thing that I ever went through in my life" (Frost Interview).

the correct interpretation of previous Supreme Court decisions dealing with plaintiff burden and state compelling interest and the need for further Supreme Court guidance on these and such related problems as "compulsion" and "exposure."

Of ten commentaries examined for this study, two were published before the Sixth Circuit ruling. Waldman (1987) concluded that "Mozert v. Hawkins County Public Schools was correctly decided and should be affirmed" (451). The opt-out plan, he felt, took into account both free exercise rights of the students and the compelling state interest in the education of its youth. Bush (1987) took a middle-ground position, suggesting that "the holding should . . . be viewed as a judicial compromise between the plaintiff parents' demand for school-financed alternative teaching and the Board's refusal to accommodate the parents' request in any manner" (768).

With the exception of Cohen (1989), who misinterpreted what the Mozert plaintiffs were seeking, characterizing them as "the Fundamentalist Christian minority" which was attempting "to impose its values upon the local public school system through the judicial system" (331), the remaining analyses focused on the questions of burden and compelling interest and offered differing interpretations of Sherbert, Thomas, and Yoder. Four expressed support for the Sixth Circuit's action, if not its reasoning, while three

defended Judge Hull's ruling. Generally speaking, those siding with the Sixth Circuit favored a narrow interpretation of burden on religious beliefs--a strict reading of Sherbert with regard to the element of force or compulsion--or a broad understanding of the compelling interests of the state or both.

Anti-Hull arguments. Among those siding with the Sixth Circuit, Ingber (1989) concluded that the appeals court "correctly overruled the district court's judgment in Mozert even if its reasoning was unsatisfying" (303). He agreed with Judge Kennedy that the state's compelling interest should outweigh any plaintiff claims of burden, but he doubted that a uniform text was essential to this compelling interest. Instead, he accepted at face value the defense assertions about an integrated curriculum and neglected evidence that the plaintiff students were never evaluated and that the defense could offer no data to answer Judge Hull's question, "How do you know it [student achievement test performance] would change if you had two sets of books?" (supra 261). Ingber maintained that in the future "courts should reject Mozert-like claims even when more craftily presented. Schools cannot avoid instilling values." For students who feel their religious beliefs are offended by curricular content, there is, he reminded, the private school option (302-303).

According to Darling (1989), the Sixth Circuit reached the right decision but for the wrong reasons: "Although the court's opinion reached the correct result, it seems to have done so based upon an incorrect perception of the plaintiffs' factual testimony, and a misapplication of first amendment principles" (510). Contrary to the finding of Chief Judge Lively, Darling believed that "coercion could be found in the Board's action which required the student plaintiffs to either read the offensive texts or forfeit their free public education" (538). Referring to Lively's use of reading aloud as a possible example of compulsion (Mozert, 827 F.2d 1066), Darling argued that,

> by this concession, the court's finding that no coercion exists rests on a tenuous basis. Given the young ages of the student plaintiffs, it strains logic to believe that a child is capable of distinguishing between the indoctrinative effects of reading objectionable material aloud and the effects of reading to oneself and participating in class discussion of the same material (537)

After examining Judge Kennedy's argument for compelling state interest and Judge Boggs' problems with that argument, Darling concluded that the state's interests were paramount, but for reasons beyond those cited by Kennedy, and that use of the Holt books by all students offered the least restrictive means for realizing this compelling interest (545).

Harkins (1988) not only found that the element of compulsion was absent in the school board's requirement to

read the books but also questioned the issue of centrality concerning the families' religious beliefs. "In Mozert," he claimed, "censuring exposure to religiously offensive viewpoints was not a fundamental tenet of the plaintiffs' Fundamentalist Christian faith" (1007-8). "Thus," he concluded, "because there are no fundamental religious tenets at stake, no degree of offense would rise to the level of an unconstitutional burden on free exercise rights" (1009). But he agreed with Judge Kennedy that, even if the plaintiffs' beliefs had been constitutionally burdened, the state's compelling interest would override because "the alleged religiously offensive viewpoints contained in the textbooks are essential to achieving the state's educational objectives of preparing students for citizenship and self-government" (1010).

For Welch, teaching values is an inescapable part of the education process, and, in a pluralistic society such as ours, the values that are taught are consensual. But, he conceded,

> deciding that public schools should teach the societal consensus on values does not dictate what that consensus is. . . . Accordingly, questioning whether public education is congruent with the societal consensus is always in order (550)

But Welch believed that power would reside with the majority. "Those within the societal mainstream," he noted "will generally consider such dissonance to be a minor irritant," but for those on the peripheries, the cost will

be much greater, and, generally speaking, "the only viable alternative . . . is private schooling" (552). The Mozert parents, he charged, demanded "that their children not be exposed to values other than those they affirmed" (553)[64] Without citing supporting sources, Welch claimed that "the First Amendment prohibits governmental interference with those values that the majority perceives to be intrinsically religious" (555). "Religion," then, he said, is "what is perceived to be religion by the community-at-large" (555), and "the concern of the First Amendment must be with matters that are religious per se, not with matters that have religious origins or that can be shown to have affinities with particular religious traditions" (556).

Pro-Hull analyses. Of the three post-appellate articles supporting Hull (Mason, 1988; Michael, 1988; and Kemper, 1989), the arguments presented by Kemper are representative.

"The conclusions of the appellate court," Kemper contended, "were either based upon erroneous interpretations of Supreme Court precedent or upon a failure to consider all of the factors that might bear upon the education of

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[64]In reality, the parents consistently asked that their children not be exposed to those values which were objectionable (i.e., the Holt series). In the complaint which they filed in federal district court on 2 Dec. 1983, they sought "a preliminary and permanent injunction . . . prohibiting the defendants from . . . compelling the student plaintiffs from reading the Holt Basic Readers . . ." (supra 213).

children" (443). One of the erroneous interpretations, he explained, was that which Chief Judge Lively gave to "conduct" and "exposure." While not intending to infer that the content of the Holt readers was in any way pornographic, Kemper pointed out that reading pornography is conduct proscribed by many religions. "The point is made," he said,

> simply to demonstrate that the reading of certain material can be conduct prohibited by a particular religion. However, Chief Judge Lively's opinion is that the reading of educational material like the Holt series cannot be conduct that burdens an individual's free exercise of religion. His rationale lies in his broad view of the plaintiffs' complaint. (421)

And the key to this rationale, he continued, is "Lively's conclusion that this is merely a case about exposure" (422). He granted that

> exposure is the issue in this case. But the exposure involved is much greater than the court perceives. It is a repeated exposure to a captive audience of grade school children, a series of exposures that reinforce and build upon one another throughout the series without any significant counterbalancing from what the plaintiff-parents perceive to be the Biblically correct point of view. The parents fear that such exposure becomes indoctrination. (422)

Based on the foregoing, he believed that "the parents legitimately fear that their children may not adopt the religious values that the parents are attempting to instill" (424).[65]

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[65]Kemper also noted that "the complaint in Mozert had a great deal to do with the age of the student-plaintiffs" (423n) (cf. comments of Bob Mozert, supra 114-15).

Kemper also took exception to Judge Lively's analysis of Yoder, arguing that to exempt the student plaintiffs from the Holt reading classes "would be a logical extension of the Supreme Court's rationale allowing the Amish an exemption from a mandatory attendance requirement that burdened their free exercise of religion" (430). Because of the children's "vulnerability" in the Hawkins County case and because of the "repeated nature of the exposure to objectionable values," Kemper concluded that the "free exercise of the plaintiffs' religion" had been burdened (430).

Kemper was likewise unconvinced by Judge Kennedy's reasoning in support of critical reading as a compelling state interest. Proof at trial as well as recognition that Tennessee's compulsory education requirement may be satisfied by means other than the public school, he argued, "suggest that 'critical reading' does not rise to a level of a 'paramount' state interest" (436). He also noted that "there was little or no proof" that learning to read critically could take place only in Hawkins County's schools. "Therefore, the Board's expressed desire for critical reading should not be considered a state interest that would preclude an exemption for the plaintiffs in Mozert" (437).

In Boggs' ruling Kemper found "credence to the notion that the centrality of a religious belief is a factor to be

considered in Free Exercise Clause analysis." But centrality cannot be decisive in questions concerning burden, he argued, "for the valuing of religious tenets is a highly subjective matter, governed in great part, if not exclusively, by the individual conscience of the believer" (439-40). Moreover, he charged that Boggs had chosen to judge free exercise complaints by a double standard, one for cases involving school boards (which he had called "no standard at all") and the second for all other cases. The Supreme Court, Kemper countered,

> has not supported any type of double standard that might mandate a higher showing of a burden in certain contexts. Neither has it based a decision on how central a threatened religious belief or practice might be to a religious objector's particular religion. (442)

Believing not only that the plaintiffs' religious beliefs were burdened but also that the state's compelling interest was not paramount, Kemper concluded that "Tennessee's interest in educating its young should not preclude granting an exemption to the plaintiffs in Mozert" (446). The most appropriate type of exemption was Judge Hull's opt-out plan, which

> appears to be the best way to solve the Mozert dilemma. It considers the sensibilities of the school children and the interests of the parents in their upbringing. It follows Supreme Court precedent defining a burden on religious exercise at least as broadly as do the plaintiffs. It also avoids the potential violations of the Establishment Clause that an inclass accommodation might create. Accordingly, the decision of the district court should have been reinstated. (449)

The Courtroom Phase: An Overview

Clearly, the centerpiece of the controversy's courtroom phase was Judge Hull's decision. It attracted attention and widespread condemnation from editorialists, political analysts, and educators and stirred much disagreement among commentators within his own legal community. All that came before or after during this period was, in a sense, peripheral.

From the available data there are several points which should be emphasized. First, in spite of criticism to the contrary, Hull's ruling was not a resounding victory for the seven fundamentalist families, and even less so for the religious new right. It dealt with a single situation, and, while possibly offering a precedent-setting solution, each future decision would "have to be made on a case-by-case basis by the teachers, school administrators, Board, and Department of Education in the exercise of their expertise, and failing that, by the Court" (Mozert, 647 F.Supp. 1203). And in states where home study was not an authorized alternative to public school instruction, the opt-out solution would be non-operative.

Second, although educators and political commentators conjectured revolving doors, cafeteria-style curricula, and school buildings collapsing under a flood of similar fundamentalist protests, they paid little heed to the burden Judge Hull had placed on the families: the requirement to

register with the school system for such instruction; the necessity for the children to perform satisfactorily on periodically administered standardized achievement tests; and, most significantly, the responsibility to provide the necessary instruction for their children in the area of reading.[66]

Considering this burden, the degree of antipathy within the county toward the families, the inconvenience and perhaps expense involved in the opt-out procedure, the lack of similar requests, either prior to or after the textbook controversy began, and the 1980 census finding that only 47.1 percent of Hawkins Countians twenty-five years of age or older had twelve or more years education (PC80-1-C44, 514) while Tennessee law required a minimum of high school diploma or GED in order for parents to qualify for home instruction (TCA 49-6-3050), it seems unlikely that the school system would have been inundated with requests.

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[66]There were of course, exceptions to the criticism, such as that offered by Phi Delta Kappan's contributing legal commentator, Thomas J. Flygare. In his "De Jure" column Flygare described the decision as "a thoughtful, well-reasoned opinion" and went on to note that the opt-out solution

> is conditioned specifically upon the parents' assurance that they will supervise and monitor the students' progress. It deserves emphasis that Judge Hull fashioned this particular remedy so that the public school teachers were not substantially burdened. ("Some Thoughts on the Tennessee Textbook Case," Phi Delta Kappan, Feb. 1987, 474-75.

Third, although the opt-out solution was regarded by many as an administrative nightmare for Hawkins County's schools, in reality it simply required that the children participating in the program be permitted to go to some other area of the school such as the library or study hall during reading period. Since both of these areas were under faculty supervision, no additional staffing would have been required. Within the classroom, the teacher would be able to devote more individualized attention to the remaining students. Moreover, the school system was relieved of the responsibility for teaching the opt-out children reading unless "deficiencies develop" in their achievement test performance (Mozert, 647 F.Supp. 1203).

Fourth, with the exception of the compensatory damages awarded the parents as reimbursement for expenses incurred as a result of the school board's mandate, Hull did not cast the school system into the position of loser. He upheld the county's selection and use of the Holt series and "required no modification in the school curriculum, which could be considered a censorship of ideas" (supra 272). Additionally, fearing a possible intrusion into establishment clause prohibitions because the complaints were so sweeping, Hull did not require the school system to give the parents what they desired most, an alternative reader (Mozert, 647 F.Supp. 1203).

Finally, the defense strategy of focusing on the plaintiffs' burden and the state's compelling interest and of relying almost solely on expert witnesses to provide support for its arguments, although persuasive at the appellate level, had a diaphanous quality, held together by threads of theory but without real substance. The description of the integrated nature of the curriculum and the consequent need for textbook uniformity was unconvincing to Judge Hull (supra 266) and provoked Circuit Judge Boggs to observe,

> I do not think there is any evidence that actually accommodating pupils in practice need be as difficult as the state contends. Indeed, the state espouses a theory of rigidity (and finds alleged experts to support it) that seems a bit ludicrous in this age of individualized attention to many kinds of student language and interest. There was no evidence of actual confusion or disruption from the accommodation that did take place. (Mozert, 827 F.2d 1080n)

The question of hardship imposed on the teachers was never supported by testimony from any teacher or school administrator actually engaged with the children. Likewise, the floodgates allegation was never substantiated. And the divisiveness and stigma purported to result from the use of separate textbooks ignored the very real divisiveness and stigma generated by the school system and its supporters during the community phase through such activities as the meeting at Church Hill Elementary School, the formation of Students Against COBS at Volunteer High School, the policy of suspending students who refused to read the Holt books,

and the efforts to portray the fundamentalist families as "outsiders," "extremists," or "fanatics."

In sum, Hull's opinion was carefully crafted to tread the narrow, tortuous path between free exercise guarantees and establishment clause prohibitions. It relieved the burden on the families' religious beliefs and substituted a burden to participate actively in the formal education process by providing reading instruction to their children. On the other hand, the operation of the school system and of the individual classrooms was unaltered except for the procedure of excusing the affected children and providing a supervised area for them to study during reading class. And in the area of the opt-out program, Hull simply relied upon existing state law concerning home study and left the details to be worked out by "the professional educators and the parents" (supra 270).

# CHAPTER VI

## THE CONCLUSION

"The values we seek in our societies and find represented in their institutional behavior," H. Richard Niebuhr wrote,

> are many, disparate, and often incomparable, so that these societies are always involved in a more or less laborious effort to hold together in tolerable conflict the many efforts of many men in many groups to achieve and conserve many goods. (1951:38)

Central to Hawkins County's "laborious effort" was the issue of accommodation: Could individuals whose religious values and beliefs conflict with segments of the school curriculum be accommodated without being forced either to forfeit their access to public education or to compromise their values and beliefs? The question was multidimensional. It gave coherence to two otherwise distinctly different phases of the controversy. It arose in religious, educational, social, and legal settings to confront parents, pastors, educators, judges, and local citizens. It attracted commentary and criticism from interested parties across the nation. Indirectly it demanded a reconsideration of two long-standing dilemmas, the relationship of the majority to a minority in a democracy and the role of the public school in a pluralistic society. As a result, it transcended all other issues and took on "core" significance in the study (supra 5, 16-22).

During the course of the conflict two models for accommodation were proposed. One, the use of alternative readers, originated informally within the community as a result of middle school principal Jay Salley's desire to "avoid trouble." The second, Judge Hull's opt-out plan, grew out of his attempt to strike a balance between the responsibilities of parents and educators on the one hand and between the protections guaranteed by the First Amendment's free exercise and establishment clauses on the other. Although there were substantial differences between these proposals, they shared a common effort to address the question of accommodation affirmatively. But as the result of a complex interplay of cultural, contextual, and judicial factors, these models and the principle of accommodation itself were rejected. The task that remains is to examine these factors, the effect this rejection had on the participants and the community, and the implications Hawkins County's textbook controversy might have for other free exercise complaints against the public school curriculum.

## The Rejection of Accommodation

The issue of accommodation first confronted the parents as they engaged in what Hunter termed "cognitive bargaining" with the content of the Holt textbooks (supra 17-18). Once they had determined the limits of their ability to compromise their religious beliefs, the question shifted to the school system, the community, and the federal courts.

The families' cognitive bargaining problem. As the parents examined the Holt textbooks, they detected what they believed to be sources of "cognitive contamination," for the religious world view they were attempting to pass on to their progeny. The options available to them were those outlined by Hunter--resistance, accommodation, or withdrawal (supra 18). The latter alternative meant removing their children from the public school system and placing them in private Christian schools which would offer some insulation from the challenges of modernity. This was the path most of them ultimately felt compelled to take (supra 230). But in the beginning they rejected this option. According to Frost, ". . . we wanted to stay in school. We really did. And . . . we didn't have the money to put our kids in Christian education" (supra 111). As a result, they had to make a choice somewhere on the "continuum of possibility" between resistance and a cognitive bargain with the pressures of modernity. Their religious convictions and their sense of parental responsibility caused them to tilt sharply toward the resistance end, declaring the Holt books unsatisfactory for their children. Yet they recognized their need to compromise. Frost acknowledged,

> You try to work out a compromise within the framework of your . . . absolute beliefs. You know, if you have to make accommodations, and you have kinda bear that accommodation yourself, then you do it. Just don't . . . you don't compromise your convictions. (supra 112)

As Frost implies here, and as is evident from the contents of the notes Mozert and Frost sent to various school officials (supra 199-200), the accommodations the parents had in mind were procedural rather than cognitive in nature. Mozert had said that he would "stand up against it very firmly" if he found that his children were "being indoctrinated or impregnated with a philosophy that's designed to supplant their Christian beliefs and morals" (supra 115-16). And Sandra Couch had told a school official,

> We still have to do what we believe is right. I want my children to grow up understanding what's right is worth standing for even if it costs you something. You do what you have to do, and we'll do what we have to do. (supra 120)

The parents' problem then was more than one of simply making personal bargains between world views. They believed that conceding to use the Holt books would profoundly affect their children and would betray their moral responsibility as parents. As a result, they refused to modify "the content and style of their belief" but expressed a willingness to make procedural compromises.

The community phase. In the minds of the county school system personnel, supporters, and sympathizers, the idea of accommodation came to be part of the problem instead of a means toward a solution. As they perceived the parents' complaints, the question evolved from whether the families could be accommodated to whether they should be

accommodated. Several conditions contributed to this change in attitude.

Different issues. One of these conditions arose from the participants' divergent understandings of the controversy's cause. What separated them was not simply contrary attitudes toward a single issue; they perceived entirely different issues.

From the perspective of the seven families, the problem dealt with the protection of the religious beliefs they were transmitting to their children. Shortly after the first school board meeting the parents began to seek what amounted to a free exercise solution to their problem through their request for an alternate reader. According to Frost, this was the extent of their intentions:

> . . . as far as a political agenda, those things that they were sayin', that was all alien to me. All I was wantin' was just an alternative. It was as simple as what it was, that all I was wantin' was an alternative book, not to have to read all those things that I considered . . . hostile to our religious beliefs. (Frost Interview)

As the community phase of the controversy neared an end, the free exercise issue had crystallized in the parents' minds sufficiently for Mozert to refer to it in his series of letters to school administrators. Being rebuffed in their complaints and appeals, however, raised another question, that of the right and responsibilities of parents versus school officials. As a result, Mozert considered the two issues to be of

> major importance to this. That is, one, a person's right to believe and to preserve that belief to their children. Whether it be Christianity or otherwise. . . . So freedom of beliefs is one issue. And the second issue is the right of the parents versus the state. Who do the children belong to? (Mozert Interview)

The complaint which the parents filed in Judge Hull's court and which moved the controversy from its community to its courtroom phase included both of these issues (supra 240).

On the other hand, Hawkins County educators and their supporters felt they had been thrust onto the front lines of a war in which the survival of the American public school system was at stake. Foster Payne expressed this concern when he observed that the parents' objections were "ultimately an attack on public education. . . . In other words, a lot of people had agendas and they were using these people" (supra 160). Elsewhere in his interview Payne explained that

> we had a battle to fight for more people than ourselves. . . . At least I felt that burden. I think we probably could have burned the books and gone on, but I don't think it would have ended . . . the issue with us was defend academic freedom and defend public education. . . .

Harold Osborn, Jim Sharp, and Jean Price shared these views (supra 181-82, 185, 214). And superintendent Bill Snodgrass inferred a similar theme with his use of such phrases as "outside agitators," "extremist groups," "a wrecking crew," and the necessity to "keep our schools free" (supra 224). Jim Sharp's attitude summed up the school system's position. "The basic issue, in my opinion," he explained

> this was gonna happen somewhere in the United States. This was gonna be carried out somewhere. . . . so I think the basic idea was, "We're gonna find a beginning place somewhere for a controversy such as this, so that we can establish our rights." . . . And once they got this established, that they could spread throughout the United States and say, "Look, the Supreme Court has said down here in Hawkins County that this could be done, so we're gonna do this all over the United States." That's the basic idea, in my opinion, behind what they did.[64]

There is in Sharp's comments, as in those of Payne, Osborn, Price, and Snodgrass, the presumption of a conspiracy against the nation's public schools, a threat much larger than what lay on the surface of the parents' protests. Beneath these protests, they believed, were conservative religious organizations and their representatives with "right-wing agendas" aimed at destroying not only the public schools but academic freedom as well.

The distance between the two views was enormous. But the condition which made accommodation particularly difficult was this fear of conspiracy against the public schools. Even if the families were sincere in their religious beliefs, they were perceived as instruments under the control of individuals and organizations in pursuit of larger agendas. Accommodating them, it was believed, would

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[64]Sharp was unclear as to the identity of "they." "I'm talking about whomever got to the Bakers," he said, "that sent 'em in here from Bristol. And I don't know who it was. But I have an idea that it might have been the attorney that represented 'em. And his organization."

do nothing to modify the actions or purposes of these background groups. Thus, Foster Payne could fear that "accommodation of any sort might have been taken as a weakness and exploited until it would have been a foothold," and Harold Osborn could suspect that "the next step would have been another book, another book, another book" (supra 172, 182).

Cultural barriers. Had no fear of conspiracy existed, there were still other impediments to accommodation. One of the most influential to Hawkins Countians was their local culture and the role of the schools in that culture. As was noted in Chapter Two, the homogeneous composition of the community, its innate conservatism, and the significance of tradition in the lives of its members were powerful forces in support of existing arrangements in local institutions. By raising their complaints, the parents were perceived as a challenge to the authority and competence of a segment of the local power structure as well as to the status quo.

Any initial desire to seek a compromise solution quickly disappeared. Community leaders marshaled local resources and applied them against the families in an effort to force their conformity. As the parents resisted, they were cast in the role of deviants to local norms. Conversely, local educators appeared as upholders and guardians of community values and standards of behavior.

With their school officials holding what was perceived to be the moral high ground, and with the families appearing as "outsiders," "fanatics," and "extremists," Hawkins Countians viewed accommodation not only as a "weakness" but also as a disavowal of an institution which traditionally had nourished and sustained local values.

The majoritarian fallacy and mediation. Another factor complicating accommodation in Hawkins County was the absence of a nonconfrontational means by which complaints could be expressed and disputes arbitrated. The situation dramatized the dilemma of a minority seeking recognition of its rights within a democracy. Without the presence of some third party, some unaligned organization or institution within the community which could speak for the parents, they were forced to appeal directly to those whose decisions and authority appeared to be challenged.

In their study of local community noncompliance with the Supreme Court's decisions on prayer and Bible reading in the nation's public schools, Dolbeare and Hammond found one contributing condition to be the lack of "regular channels through which the issue could be raised to official visibility" (8). In other words, the individuals or minority groups whose rights had been recognized by those decisions remained hostage to majority will and official inertia. "The absence of channels or arenas through which

the issue might be legitimately and routinely raised," they explained,

> means that an individual's only recourse is to initiate a lawsuit. The social and psychological costs of doing so, and the possible isolation or ostracism which might follow, make this an unlikely course in a small town setting. (8)

The counterargument is that such channels are unnecessary because a democratic government contains its own self-righting mechanism in the principle of majority rule. The families were criticized in this regard, both inside and outside the community, for failing to organize a political constituency and elect school board members sympathetic to their cause.[65] But given the realities of the county's homogeneity, the absence of the families from membership in the local power structure, and the families' lack of a power base from which to exercise any effective degree of political leverage, advocacy of majoritarian principles becomes simply a disguised support of the status quo.

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[65]For example, recall the comments of District of Columbia School Board president R. David Hall and of attorney David H. Remes (supra 283-84). Closer to home Greeneville attorney Nat Coleman, one of the school board's lawyers, suggested,

> "These people have a solution if they are dissatisfied. . . . When the next election rolls around, throw the rascals out at the polls. Choose a new school board to suit their religious beliefs." (Quoted in "Use Ballot Box to Make 'Anti-God' Point, Parents Told," The Tennessean, 10 Dec. 1983, 1B)

And Clay Bowers reflected, "Politics always need to be involved. . . . Politics gets the people into the system. That's the way it is; that's the way it'll always be."

The September first meeting at Church Hill Middle School, organized by Vicki Frost and Jennie Wilson (supra 159ff.), was an attempt to cultivate a support group, the forerunner of a political constituency, as was Bob Mozert's formation and leadership of COBS. Both efforts failed, however, partly because of the political inexperience of the families, partly because of the conservative nature of the community, partly because of the rapid, well-organized response of the school system. Within just a few weeks, support for the families became socially unacceptable.[66] As a result, the possibility of an organization defining for itself a mediating role and coming forward from within the community was preempted by the speed with which the county became polarized. By early December in 1983, as Foster Payne observed, "[I]f you had any other persuasions, it wouldn't have been well received to express them." A contributing factor was that a number of otherwise possibly concerned and influential families within the community were sending their children to other school systems (supra 57-59). As a result, while they might have been a persuasive force for accommodation, they had no vested interest in the controversy or in the local schools.

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[66]This unacceptability persisted throughout the controversy. Jimmy Eaton's unsuccessful bid for election to the school board in 1986 is indicative of the parents' unpopularity and their lack of any political constituency (supra 121-22).

The churches, which could have served as mediators, came down instead on the side of the schools for three locally cogent reasons. Congregations had a greater number of school personnel and their relatives than of members of the protesting families. There was the link between schools and churches mentioned by Harold Osborn--the number of pastors' wives who were school teachers (supra 64). And those pastors who sent their children to non-county schools undoubtedly compromised their leadership role in this issue.[67]

Thus, the social and political circumstances in Hawkins County did not serve the cause of accommodation. Without any local neutral channel through which they might make an appeal for assistance and without the political leverage to overcome the community's uniformity, the families had no choice but to become confrontational or acquiesce if their children were to continue to participate in public

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[67]Vicki Frost added a fourth reason. The parents' objections to the textbooks

> caused a great offense with the teachers and people in the administration who <u>were</u> Christians because they felt that their own Christianity was bein' attacked. And the ministers quickly came to the defense of their . . . congregational member teachers because they felt like the validity of their Christian faith . . . was bein' attacked. And so they stood up and supported their teachers. . . . (Frost Interview)

schooling. Since this was a matter of conscience, they became confrontational.[68]

External factors. In addition to conditions within the community which contributed to the failure of accommodation, there were external causes as well: the growing criticism of American public education, the entry into the controversy of national advocacy organizations, and the public impressions created by media coverage of the events in Hawkins County.

As public outcry against the schools grew more intense in the 1980s, individual states began developing political responses. In Tennessee, where test-measured public school performance had been well below the national average, the Basic Skills First Program brought together the concepts of student achievement, curriculum standardization, and statewide testing. It also created bureaucratically administered imperatives carrying the authority of the state

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[68]Tocqueville might have been describing the political impotence and the frustration of the plaintiff families when he wrote:

> When a man or party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves as its passive instrument. To the police? They are nothing but the majority under arms. A jury? The jury is the majority vested with the right to pronounce judgment; even the judges in certain states are elected by the majority. So however iniquitous or unreasonable the measure which hurts you, you must submit. (252)

educational structure and adopting the rationale of national educational reform literature. For systems like Hawkins County, which were near the bottom of the state in student test score results, local educators were under a great deal of pressure to improve student performance. This meant concentrating in the classroom on those skills which would appear later on statewide tests. Within this standardized system, curricular uniformity was seen as the key to success. Diversions, it was believed, would not only impede individual student achievement but possibly undermine performance of an entire class and were therefore to be avoided. The development and administration of this program lent an aura of expertise to educators and an appearance of defending and promoting national economic and political interests. Another effect was to erect a wall against parental involvement, particularly in matters dealing with the school curriculum. Additionally, by its reliance on uniformity and standardization, the program offered intrinsic arguments against accommodation.

The value of national advocacy organizations to individual citizens or small minority groups seeking to defend their civil rights is unquestioned. Certainly the parents and possibly the school system could not have sustained the expense of a protracted legal battle without the respective support of Concerned Women for America and People for the American Way. Yet the presence of CWA and

PAW, with their fear of conspiracy, their extreme view--bordering on paranoia--of certain segments of American society, their sense of foreboding for the nation, their conviction of the rightness of their respective causes to America's political and moral health, and the presence of evil which each detected in the other had far less positive effects. From its point of entry in the controversy, each organization superimposed its own attitudes and goals on those of the side it was representing.[69] As a result, attitudes were polarized and opportunities for accommodation were greatly diminished.[70]

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[69]PAW's influence on the school system and its supporters was particularly apparent. Soon after local educators contacted PAW in mid-October 1983 and received a copy of its manual, the public school conspiracy theory took root in the minds of Hawkins Countians and efforts to isolate the families commenced (supra 188-89).

[70]The participation of both organizations also had its paradoxical aspects. In CWA's case, from the theoretical point of view, free exercise promotes the equality before the law of all religions. But it also assumes equality of theological truth and equal relevance of religious belief to individual believers. On the other hand, equality of all religions was a theme to which the parents objected in the Holt textbooks and is a position with which conservative Protestants in general disagree. Yet by focusing on the free exercise issue, CWA was inadvertently placing its conservative religious beliefs and those of its seven client-families on an equal footing with all other religions. Additionally, winning a free exercise case would not substantially advance CWA and the religious right in their battle against secular humanism. While it might establish certain legal precedents, the nature of free exercise complaints requires that each subsequent protest be fought anew, weighing competing claims about religious beliefs sincerely held, burden, compelling state interest, and less restrictive means.

PAW's participation confounded its cause as well. As an organization dedicated to pluralism and diversity, it

The contribution of television and newspapers likewise reduced the opportunities for accommodation. In a community already sensitive about the quality of its schools and its poor-kinfolk relationship to its wealthier, more progressive Kingsport and Sullivan County neighbors, local people tended to agree with school board member Conley Bailey's assessment that "nothing but bad publicity for the county will come out of this thing" (supra 168). Press and television coverage, and particularly headlines and political cartoons, succeeded in projecting a negative picture of Hawkins County as well as of the families who raised the textbook issue. When the controversy moved into its courtroom phase, the trial attracted national media attention as "Scopes II." Distorted images were raised not only of Tennessee's "Monkey Trial" sixty years earlier and of religious fundamentalist beliefs out of touch with twentieth century scientific knowledge but also of an unsophisticated, rural setting conducive to such events. This further aggravated Hawkins County sensitivities. According to Clay Bowers,

> The defendants, the school board, the rank-and-file of the community that supported the school

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nonetheless backed the school system and the state in their arguments for uniformity and standardization of the public school curriculum. Carried to the extreme, this raises the specter of state-directed education, thought control, and social and intellectual conformity. Moreover, PAW opposed the families' beliefs and their requests for relief as threats to the "American Way." On one occasion Michael Farris, the families' attorney and CWA's general counsel, characterized PAW's position as "the committee to stamp out intolerant people" (How Shall They Learn? . . .).

> board, felt they got a bad rap because [press coverage] displayed us as Appalachian hillbilly Tennesseans who were still not over the Scopes trial. And that even though the school board was fighting diligently to protect its rights, that they were still backwoods hillbillies.

In the eyes of local citizens, some of the controversy's tarnish could be removed if the county reacted firmly, clearly separating itself from the protesting families and thereby demonstrating that it wasn't a repository of early twentieth century Tennessee religious and educational views. As in other contexts, accommodation had no place in such a response.

The courtroom phase. Although Judge Hull's decision was widely interpreted as a victory for the plaintiff families, it was in reality a carefully constructed effort to accommodate both sides. It left the school curriculum intact and imposed no burden on local educators to provide any modified reading instruction outside the adopted Holt program to the plaintiff students. On the other hand, it allowed the children to remain in the community's public schools without experiencing a burden on their religious beliefs by using the Holt books. Periodic testing by the school system was to determine whether the students were progressing in reading. This placed a considerable burden on the parents to provide satisfactory reading instruction. Always present was an awareness that if their children did not maintain acceptable reading standards they would be

forced to return to school-sponsored instruction in the Holt books or to forfeit their access to public education and enroll in a private school.

The controversy might have ended here with accommodation the clear victor had both sides been willing to accept this plan. But several of the same factors which had worked initially against a compromise in the community phase now forced a rejection of the opt-out solution and an appeal to the Sixth Circuit Court. Yet the presence of these factors does not account for the appellate decision to overturn Hull and, coincidentally, to block accommodation. Two other explanations offer insight into these events.

One of these deals with judicial conceptualizations of public education, learning theory, and how learning occurs in a formal classroom setting.[71] Defense attorneys and county school officials maintained that one of the primary purposes for using the Holt series was to broaden a child's understanding of the world and to promote tolerance of others in a diverse society. Nonetheless, the requirement for textbook uniformity within the context of the state's Basic Skills First Program, with its 661 identified basic skills in reading, and the administration at periodic intervals of standardized achievement tests suggests an

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[71]It is not intended to imply here that these conceptualizations are shared by all or even most jurists. They were however, held by a majority of the three-judge appellate court in Mozert.

inculcative, authoritarian classroom environment which concentrates on the acquisition of specific behaviors and skills.[72]

But Judge Lively, in writing the opinion for the court, either rejected or failed to consider classroom conditioning or the inculcative function of public education.[73] Instead, he held that exposure, which in Hawkins County's case meant use of the textbook series for as long as eight years, could take place in a classroom environment without compulsion to accept or reject concepts that might conflict with religious beliefs. Without making allowance for the ages of the children involved and their intellectual

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[72]This hiatus between intent and reality is not unique to Hawkins County. John Goodlad found it throughout American public education.

> The gap between the rhetoric of individual flexibility, originality, and creativity in our educational goals and the cultivation of these in our schools reveals a great hypocrisy. From the beginning, students experience school and classroom environments that condition them in precisely opposite behaviors--seeking "right" answers, conforming, and reproducing the known. These behaviors are reinforced daily by the physical restraints of the group and classroom, by the kinds of questions teachers ask, by the nature of the seatwork exercises assigned, and by the format of tests and quizzes. They are further reinforced by the nature of the rewards--particularly the subtleties of implicitly accepting "right" answers and behaviors while ignoring or otherwise rejecting "wrong" or deviant ones. (241)

[73]This inculcative function has been defended in a number of Supreme Court decisions. For example, see Ambach v. Norwick, S.Ct. 1589 (1979), Board of Education, Island Trees v. Pico, 102 S.Ct. 2799 (1982), or Bethel School District No. 403 v. Fraser, 106 S.Ct. 3159 (1986).

vulnerability or for those theories concerning different mental abilities at different stages in child development, Lively wrote:

> The only conduct compelled by the defendants was reading and discussing the material in the Holt series, and hearing other students' interpretations of those materials. This is the exposure to which the plaintiffs objected. What is absent from this case is the critical element of compulsion to affirm or deny a religious belief or to engage or refrain from engaging in a practice forbidden or required in the exercise of plaintiff's religion. (Mozert, 827 F.2d 1069)

When the controversy arose, these children were at an age where religious beliefs are still being formed, where the development of a total world view lies somewhere in the future, and where authority figures still exert considerable influence. In such circumstances "compulsion" in the form of behavior modification might intrude much more subtly over time, an effect generally recognized by educators in the definitions they apply to the term "educational objectives."[74]

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[74]Consider, for example, the following definitions:

> By educational objectives, we mean explicit formulations of the ways in which students are expected to be changed by the educational process. That is, the ways in which they will change in their thinking, their feelings, and their actions. (Bloom, 26)

> Objectives state the specific, overt changes in student behavior that are expected to result from participation in a unit of learning activities. (Saylor et al., 163)

In effect, Lively applied to these children the same standards of burden and its component of compulsion as were applied to adults in Sherbert and Thomas (supra 288-90). By adopting these higher standards without consideration for the children's immaturity, the inculcative atmosphere of the classroom and the behavioral changes implicit in the design of educational objectives, Lively raised the burden threshold and thereby reduced the opportunity for violation of the free exercise clause. And without burdened religious beliefs there was no judicial requirement for accommodation.

The second explanation for the failure of accommodation in the courtroom phase of the controversy involves a dilemma courts face in public school free exercise cases and a popularly held conceptual model of the appropriate relationship between courts and school boards. Contrary to Kemper's analysis (supra 303), grounds do exist for the application of a double standard by which free exercise questions in the public schools are decided. Whereas the commonly acknowledged remedy grants exemption for the plaintiff, such a solution is not sufficient in cases where the child must meet compulsory attendance and public school curriculum requirements.[75] Judges must devise an

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[75]An exception might be advanced here by citing Yoder, where exemption alone offered a satisfactory solution. Two factors recognized by the Supreme Court in the case of the Amish, however, distinguish it from Mozert or other free exercise cases involving the public school and its curriculum. One of these was the consistent and persuasive evidence "that enforcement of the State's requirement of compulsory formal

alternative which will protect the child's religious liberty while complying with these mandates. In other words, a court, in the absence of community initiatives to seek a less restrictive means of realizing educational goals, must not only exempt the student from the situation creating the religious burden but also construct a solution that will be free of burden and yet meet the attendance and curriculum requirements. Designing such an alternative runs the risk of trespassing into Tribe's "forbidden zone of accommodation" by raising establishment clause issues (supra 21). It also invites charges of "judicial activism" from political conservatives and from educators desiring to preserve their autonomy and the status quo in the public schools. Ironically, this is what happened to Judge Hull, a Republican appointee by a conservative administration. Although he believed he had safely avoided establishment clause problems, Hull was widely criticized for his interference in the local education process. To his critics, the alternative was to observe the long-standing tradition of court deference to educators and administrators in their operation of the public schools.

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education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs" by threatening their entire way of life. The second was the educational program provided by the Amish for their high-school-age youth: ". . . an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests" of preparation for citizenship (92 S.Ct. 1535, 1536).

Although many references to the concept of deference exist, one of the clearest and most forceful appears in the Supreme Court's 1968 decision, Epperson v. Arkansas (supra 265n).[76] But the "basic constitutional values" to which Epperson refers have rarely extended to questions of free exercise of religion where the school curriculum is concerned. Although there are numerous examples of school boards or school districts having been found in violation of the establishment clause, the Supreme Court, as Judge Boggs noted, "has almost never interfered with the prerogative of school boards to set curricula, based on free exercise claims" (supra 293). Lacking some more precisely appropriate precedent than either Barnett or Yoder, courts have tended to rely on the tradition of deference, thereby avoiding solutions which might be regarded as "judicial activism" and interference with functions that are "primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges" (Hazlewood, 108 S.Ct. 571, 1988). As a result, in the words of Judge Boggs, ". . . under the Supreme Court's decisions as we have them, school boards may set curricula bounded only by the Establishment Clause" (supra 294).

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[76]Examples of other statements by the Supreme Court inferring a policy of deference can be found in Myer v. Nebraska, 43 S.Ct. 628 (1923), Pierce v. Society of the Sisters, 45 S.Ct. 573 (1925), Board of Education, Island Trees, v. Pico, 102 S.Ct. 2806 (1982), Bethel School District No. 403 v. Fraser, 106 S.Ct. 3165 (1986), and Hazlewood School District v. Kuhlmeier, 108 S.Ct. 571 (1988).

In his Sixth Circuit majority opinion Chief Judge Lively referred indirectly to this policy of deference:

> When asked to "interpose," courts must examine the record very carefully to make certain that a constitutional violation has occurred before they order changes in an educational program adopted by duly chosen local authorities. (Mozert, 827 F.2d 1070)

The "constitutional violation" hinges on the degree of plaintiff burden: to what extent has the public school curriculum burdened the religious beliefs of the students? By raising the burden threshold, as Judge Lively did through his interpretation of "exposure" and "compulsion" (supra 289), the opportunities for constitutional violation are reduced and the relationship of deference between federal courts and local school boards is preserved. As a result, courts avoid "interposition," curriculum policies potentially affecting free exercise issues remain under the aegis of local policymakers, and initiatives for accommodation are finessed.

The Consequences of Nonaccommodation

"It is wise to ask," Laurence Tribe advises in his American Constitutional Law, "whether a governmental action 'sends a message to nonadherents that they are outsiders, not full members of the political community'; but it is unwise to require that the nonadherents prove it by public

opposition" (1281). [77] Nonadherents frequently choose, as Dolbeare and Hammond discovered, not to risk the "social and psychological costs" associated with public opposition.[78] But Tribe implies that there are potential costs to the community as well. Those in power should reflect on the consequences of any decision to define certain community members as outsiders simply because they are nonadherents; the resulting controversy may produce outcomes unsatisfactory to all concerned.

The alternative, of course, is accommodation. In Hawkins County's case it had twice been within easy grasp. But local (and subsequently state) educators, backed by the guidance and support of People for the American Way, rejected these opportunities and adopted a strategy designed to force the families' conformity or their withdrawal from

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[77]Tribe had been referring to nonadherents here as "people who do not adhere to the majority religion" (1281). In dealing with the effect of government policy on individuals he writes,

> the result often turns on whether one adopts the perspective of an outsider or that of an insider. . . . It seems clear that, in deciding whether a government practice would impermissibly convey a message of endorsement, one should adopt the perspective of a non-adherent; actions that reasonably offend non-adherents may seem so natural and proper to adherents as to blur into the background noise of society. (1293)

[78]A similar outcome was suggested by Tribe. Minority believers, he said, "may, despite their discomfort over a government action respecting religion, choose to avoid confrontation, preferring to suffer in silence rather than to risk creating a backlash against themselves and their beliefs" (1281).

the school system. As has been seen, the factors which contributed to this course of action were many and varied, but the implications of the strategy undertaken were never carefully examined. As a result, both the families and the community suffered undesirable long-term consequences.

Social cleavage. The social cleavage which took place did not tear the community asunder. It was more like a small flake chipped from a much larger rock, since only the plaintiff families were broken off by the split. Yet its effects must be gauged by conditions other than size. First, it was an intentional maneuver on the part of the school system and its supporters to establish boundaries which, in the minds of Hawkins Countians, placed the families outside local cultural norms. The ostracism which followed was not temporary. In an interview conducted two years after the district court trial and five years after the controversy began, Harold Osborn, responding to a question whether the families were ostracized, replied, "Yes, there's no question. . . . They still are." A few months later, Vicki Frost confessed,

> This is the first year [1988] that I have actively got out in the neighborhood and gone to garage sales and things like that. . . . [B]ut still, . . . I think, "No, I'd better not." And because there was so much hostility, so many lies told, you know. I mean just about . . . who I am and what I am and what was goin' on in the case. . . . [M]y nephew had a little ball game, which was during the summer, I believe down at Volunteer [High School]. . . . And I thought, "Well, my sister-in-law's gonna be there." And it was not

> like a school game. It was just a community [league]. . . . And I went by myself. It was good therapy. But my family was a little nervous. Marty said, "Mom, you're crazy to go. What do you mean, goin' down there?" But there's still that. Still that. (Frost Interview)

Second, this resulting estrangement was accompanied by threats, hostility, and acts of repugnance. While there were no reported incidents of violence against the families, Bob Mozert indicated that he and his wife had "received some anonymous phone calls. There were threats to burn our home, things like that" (Mozert Interview). Harold Osborn acknowledged that the families

> were made to feel unwelcome in public. Even so late as just a few months ago [this interview took place in 1988] I got a report that Vicki walked into a restaurant and sat down and within minutes everybody around her had got up and moved. Some walked off and left their food. Others took their food and went to another table. Here's Vicki, a great big circle, and it was crowded everywhere else. Another person told me about bein' in Rogersville and seein' Roger Frost buying groceries about eleven o'clock one night. And this person said, "I thought to myself, 'You know, it's really a shame that he has to come all the way down here to buy groceries and not have somebody pickin' on him.'" She said about that same time she saw a man walk by him, get real close and say, "Son of a bitch," and walk off.[79]

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[79]Osborn's account of the restaurant incident involving Vicki Frost evokes images of Nathaniel Hawthorne's description of the treatment of Hester Prynne by her fellow villagers:

> As was usually the case wherever Hester stood, a small vacant area--a sort of magic circle--had formed itself about her, into which, though the people were elbowing one another at a little distance, none ventured, or felt disposed to intrude. It was a forcible type of moral solitude in which the scarlet letter enveloped its fated wearer. . . . (213)

This animosity extended to children and to family members as well. Vicki Frost reflected,

> . . . it's sad when a little child says that they hate you. Or they tell a little friend of someone you know that they hate you. And you know that is not because they know you. It's just somethin' that they've heard from someone else say somethin' hostile about you. You know, you don't rejoice in that. (Frost Interview)

And another parent explained that, as a result of the controversy, she and her husband had drifted apart from other members of their families, some of whom regarded them as a "bunch of kooks" (Telephone conversation between Sue Eaton and the author, 29 July 1989).

Additionally, the intransigence and hostility accompanying the school system's response to the families served to warn other community residents, present and future, of the futility as well as the "social and psychological costs" associated with public opposition to a majority-supported institution. The stimulus of different attitudes and perspectives and the benefit of frank and open criticism and recommendation were lost. Discourse was confined to the boundaries set by culture and tradition. A community whose schools were in serious financial and academic trouble chose to reinforce the "mindset" and the "securities" that had so disturbed Rev. Martin McCallister (supra 38).

Student eviction. The community's divisiveness extended to schooling as well. As a result of the school

board's uniform textbook policy, only two of the children involved in the controversy remained in the county school system. A 1989 account in the Kingsport Times-News reported that five of the students "are in two separate Christian schools, three have graduated from Christian schools, three are now in home schooling and three are in Kingsport schools" (Mike Dye, "Trial's Principals Have Traveled Separate Ways," 15 Oct. 1989, 1A). Of the three in Kingsport schools, two transferred for their senior year in order to take courses not available in the Christian school they had been attending (Telephone conversation between Vicki Frost and the author, 27 July 1989).

Throughout the controversy school personnel and later their counsel contended that the compelling interests of public education required such goals as "to bring people together, not divide them" and to teach "about tolerance, diversity, [and] imagination" (Mozert Record of Trial, 24 Sep. 1986, 47,77). They also argued that a uniform textbook was essential in order to realize these goals and to prevent curriculum fragmentation. Contrary to these claims for tolerance and diversity, however, they repeatedly suggested that if the families were dissatisfied with the education their children were receiving, they should seek other options (e.g., supra 197-98, 203, 215, 253, 261, 264).[80]

[80]Speaking simply as a member of the community, Lester Sills offered a similar opinion:

Time, distance, cost, and availability limited the parents' options in most cases to local private schools similar to that maintained by Rev. William Patterson's fundamentalist church. In his study of life and learning in a Christian fundamentalist school, Alan Peshkin expressed the ambivalence many feel toward the presence of such institutions in American society. On the one hand, he believed that "the more vigorously groups like Bethany's Christians thrive, the more we know that American pluralism is healthy." On the other, their "monolithic truth" promotes "conditions that are antithetical to American society as I value it" (293-94). Among these conditions is the cultivation of "intransigence, since students neither learn the habit of compromise nor grasp its necessity in a diverse, complex society" (296). Yet, far from exemplifying the alternative of openness and appreciation of social and cultural diversity, Hawkins County's schools reflected the surrounding homogeneous community and its traditional values. It is one of the supreme ironies of the controversy, then, that the state and local school system, espousing the causes of tolerance and diversity, could not make room for these children but instead, by pursuing a policy of curricular uniformity, forced several of them into

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> But this is kinda what you say is majority rule business. The majority accepted the school, and if you wanta put [your children] in the mainstream, why, that's all right. But if you don't, why, you could pay for it . . . put 'em out on your own.

a learning environment characterized by orthodoxy of belief, thereby frustrating some of the very educational interests they believed so compelling. The capacity for intransigence was present in either set of classrooms.

The explanation for such contradictory action lies deep within the culture of Hawkins County and the role its schools and educators play in that culture. It was not the compelling interests of public education that were being served but the schools' cultural role within the community and the maintenance of existing political arrangements. Local educators perceived the families as a source of interminable challenges to their authority rather than as a group whose free exercise rights might have been violated. By forcing the children out of the school system, they eliminated this source.

Negative community models. Considering the consequences of these policies of cultural maintenance and defense of the status quo, one might ask along with H. Richard Niebuhr what values had been "written afresh . . . 'on the tables of the heart'" (1951:37), especially of the school children who were day-by-day witnesses to the conflict. What lessons did they learn in tolerance, community, and diversity from the meeting at Church Hill Elementary School? from the suspension of schoolmates because of their religious beliefs? from the arrest of one of the mothers? from the frequent quotations in news

articles and television reports describing the families as "outsiders" and "fanatics"? These and similar events bore the imprimatur of the community's leaders and a large segment of the local population. Their messages were that the schools could not make allowance for these families' religious beliefs and that, because these people were different, they did not have a place in the community. As the county's youth observed these events taking place around them, the school system's response to the families was, at best, a source of confusion as to which set of values was an appropriate guide for social conduct. At worst, seeds of the attitudes which contributed to the county's problems were sown in the minds of another generation.

Condemnation of fundamentalists. Because the controversy was associated in the public mind with fundamentalism, it and its adherents bore the brunt of widespread ridicule, caricature, and animosity. According to David Wilson,

> a lot of people have come to hold much more negative views of fundamentalist Christians . . . I don't think before all this happened . . . there . . . would have been as many people in Hawkins County with a negative view toward someone who claimed to be a fundamentalist Christian.

This reaction was repeated on a national scale where events were interpreted as a "reprise" or a "replay" of the Scopes trial. It became a simple matter to dispose of the families' complaints by making unfavorable associations and

arousing or reinforcing negative attitudes. As a reporter covering the trial, Wilson and his colleagues would "sit around and talk sometimes. . . . And most of the reporters that I talked to," he said, "did not view the fundamentalists' complaints very seriously from a constitutional perspective."

The problems with these reactions are twofold. First, at the local community level neither the objections raised by a minority--in this case, fundamentalists--nor the means for possibly alleviating such objections are seriously explored. Instead, they are linked with social aberrations and dismissed. And second, an entire segment of American society--again in this case, fundamentalists, although other minority segments are equally vulnerable--becomes an epithet connoting negative (i.e., nonmajoritarian) attributes and attitudes. This tendency to categorize and to damn by association has serious implications for a society that is becoming more, not less, heterogeneous.

Hawkins County's controversy offered an opportunity to build bridges through understanding and accommodation, through, as Walter Lippmann put it, "the effort to find agreement beneath the differences." Instead, a message was sent to fundamentalists across the nation that their educational concerns were not to be taken seriously and that, if they wanted their children to participate in public education, they would have to bow to the majority morality.

A legacy of attitude. In interviews, depositions, transcripts of trial, and news accounts school supporters expressed little regret about the division which had occurred within their community and its schools. Nor did they appear to be concerned about the possibility of negative messages being transmitted to local youth. Instead, courtroom success was considered vindication of the school's policies. For Jim Sharp, drawing the curtain on the conflict meant a return to the status quo ante in the local schools:

> In the five years that the controversy was being tossed back and forth between the federal court and the appellate court, the Supreme Court, . . . in those five years we have had a lot of apprehension [among school personnel]. Because they didn't know whether or not they would be teaching five sections of reading in one classroom or not. They didn't know what to do, in fact. But after the decision was made by the Supreme Court not to hear the case, saying the county board of education was correct in what they did, I can't see that it's had any effect on [the] teachers after that has happened. We're about our business as usual now, and we're teaching from the textbooks that have been adopted by the board of education and the selection committee. And I don't think any teacher's having any problem now with whether or not we're teaching something that we will be taken to court for or not.[81]

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[81]In 1988, the year that reading textbooks were to be considered again for adoption, Hawkins County replaced the Holt series with one by Macmillan. Apparently disregarding or not recalling the testimony of defense witnesses and the arguments of defense counsel, Foster Payne explained that the Macmillan program "has two different levels of texts . . . so it makes it handier that way. You don't use the same text for all students." Compare this decision to the rationale offered by board members Bob McKee, Conley Bailey, and Doug Cloud in support of the school board's uniform textbook policy (supra 192-93).

School board chairman Harold Silvers defended the county's treatment of the parents, suggesting that local school personnel had made a mistake by not suppressing them sooner. According to the Kingsport Times-News, Silvers stated,

> "If we had taken a hard-nosed attitude to begin with . . . I mean a real hard-nosed attitude, it would have never gone this far" . . . .
>
> "I listened to them patiently at first. I thought all they wanted was to be heard."
>
> If a harder line had been taken, the case probably would still have ended up in federal court, Silvers said, "but the board wouldn't have had to listen to these people for four or five meetings." (Mike Dye, "Win by Frost Would Have Major Impact," 15 July 1986, 1, 2A)

But Clay Bowers, who had not been a participant, believed that this "hard-nosed attitude" and the sense of vindication were two of the controversy's major legacies to the county. His analysis described the county's continuing dilemma:

> . . . everybody's going to be very reluctant and very defensive against ever letting this happen again. In other words, if we can, cut it off at the pass. Nobody saw it was coming. Nobody knew where the pass was to try to cut it off. In the future they will see that.

The consequences of such a policy would be disastrous, he feared, for local education. Referring to an editorial which had appeared in the Rogersville Review, Bowers explained that it

> showed the Stanford Achievement Test [results], and Hawkins County fell behind almost every surrounding county, the Tennessee average, and the

> national average. . . . It clearly showed in almost all areas we were either the worst or tied for the worst. . . . [S]o that education system here needs help. We are at the bottom of the bottom. . . . And we aren't going to help ourselves by fighting. . . . So that's why . . . I say there was as much harm done as good is because it's another fight. And that's not what the education system here needs.

Thus, just as there were personal and social consequences as a result of the failure to achieve some form of accommodation, there was also a legacy of attitude. The comments here of Sharp, Silvers, and Bowers offer glimpses into this community temperament: A reaffirmation of the status quo, a vindication of educational policies, a reinforcement of cultural norms, and an intensified suspicion of outside values. As Bowers feared, such an attitude would not contribute to improved local educational quality. Instead, it was a kind of mental and cultural retrenchment, supporting McCallister's observation that Hawkins Countians "have clung to the securities of the way that they have always done [things]" (supra 39).

Present and Future

Although Hawkins County's controversy happened to involve fundamentalists, fundamentalism wasn't the real issue. In another time and place a similar free exercise complaint could have been raised by Catholics, Jews, Quakers, American Indians, or adherents of any number of other belief systems. Nor was the controversy about the perceived intrusion of secular humanism into the public

schools. These were all components of the contemporary problem, but in a broader sense the conflict was between the individual's freedom of religious belief under the First Amendment and the curriculum mandates of the state. The message that ultimately came out of the controversy was clear: state and local school officials were assured that accommodation of free exercise objections to the curriculum was not required and that courts would very probably uphold them if they denied accommodation. Parents, on the other hand, were told that they must accept the values contained in the curriculum as long as these values did not violate the establishment clause, or they must look to other sources for their children's education. It was, as Judge Boggs had concluded, a case of "my way or the highway" (supra 293-94).

This message was reinforced by a post-controversy Supreme Court decision (Employment Div., Dept. of Human Res. v. Smith, 110 S.Ct. 1595 [1990]) which appears to restrict the compelling state interest test to a very narrow range of free exercise cases. Although Smith addresses the constitutionality of criminal law when applied to religious rites or observances which contravene that law,[82] the implications of the decision are far reaching. Writing for the majority, Justice Scalia maintained that the Court has

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[82]Specifically, Smith concerns the use of peyote by members of the American Indian Church when such use in not an exemption within the provisions of a state statute banning the substance.

"never invalidated any governmental action on the basis of the Sherbert test [i.e., compelling state interest] except the denial of unemployment compensation" (110 S.Ct. 1602). Rather than apply this test to criminal law (or presumably to other areas of law as well), he contended that a "sounder approach" would be "to hold the test inapplicable to such challenges" (110 S.Ct. 1603). Applying the compelling state interest test "across the board," he feared, "would be courting anarchy," a danger which "increases in direct proportion to the society's diversity of religious beliefs, and its determination to coerce or suppress none of them" (110 S.Ct. 1605).[83] Accommodation, then, reverts to a function of politics and the majority will, although Scalia acknowledges that this

> will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which judges weigh the social importance of all laws

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[83]Scalia's reasoning differs sharply from that of the authors of The Federalist, who argued that individual rights could best be protected by diversifying the population:

> In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. (Federalist No. 51, 339-40)

against the centrality of all religious beliefs.[84] (110 S.Ct. 1606)

If applied generally, Smith would tilt the scales of power sharply toward the state at the expense of the individual and would further expose minority free exercise rights to the will of the majority. Insofar as public schooling is concerned, state departments of education and local school systems would be freed of both the requirement to demonstrate a compelling interest in a law or regulation and the test to meet that compelling interest by a less restrictive means. With such assurances and the protection provided by a high burden threshold, public school systems will be increasingly immune to litigation involving free exercise challenges to the curriculum.

Adding to this immunity is the protection state and local school officials enjoy as a result of the federal courts' traditional policy of deference. But from the individual student's point of view, court deference further encumbers free exercise rights. When merged with fear of legal costs and desire for conflict avoidance, it tends to

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[84]Again, the authors of The Federalist disagree. In Federalist No. 10 Madison wrote:

> When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. (57-58)

create a what's-the-use syndrome, persuading families to remain mute or transfer their children to another educational setting rather than engage in long, costly, unpopular, and quite possibly futile litigation. Additionally, court deference relieves local educators of the responsibility for actively seeking means to accommodate free exercise complaints. Instead, they can hold the line, confident that their actions will be upheld if taken to court. And finally, educators may be emboldened to make curriculum decisions without regard for sensitivities of religious minorities.

When viewed against such a background, Hawkins County's controversy represented a victory not only for its school system but for local and state school boards and school administrators across the nation. But it was not, as many analysts and educators contended, a victory for academic freedom. Academic freedom has more than one dimension. While it must permit schools to pursue educational goals relatively unfettered, it must also acknowledge the different learning styles and needs that are a part of human individuality. Striking a balance between these dimensions is the province of accommodation. Accommodation would have allowed Hawkins County's school system to pursue its community-maintenance and student-performance goals while safeguarding the religious beliefs of the fundamentalist families. Whether the national interest in improved

educational quality for all students would have been realized remained to be seen. But the attainment of that national interest--which was never a constitutionally expressed concern of the Founding Fathers--must be weighed against the maintenance of free exercise rights--which was.

Almost lost in the heat and noise of Hawkins County's controversy was another message: in spite of court rulings and precepts, there were and are informal means for accommodating free exercise objections to the curriculum within boundaries set by the establishment clause. The problem is one of disposition, understanding, and willingness to compromise. It requires a search beyond individual and institutional interests for a larger public good and the effort to convince members of the minority faction that they still have a voice in their children's education. Thus, school officials desiring to avoid the experiences of Hawkins County would be well advised, as Laurence Tribe suggested, to ask themselves whether their policies send "a message to nonadherents that they are outsiders, not full members of the political [or educational] community." They should then judge those policies from the perspective of outsiders, and not "require that the nonadherents prove [their outsider status] by public opposition" as the families in Hawkins County felt impelled to do.

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