

## For Thursday, February 24

### Please read and bring these items to class:

#### 1. Curriculum, the Culture Wars, Intellectual Freedom and Political Control

##### 1. [School curriculum fights increasingly put children in culture war crossfire](#)

##### 2. Cases in U.S. federal courts

(note: I have abridged the court opinions to remove material [on legal process issues, etc.] that could distract attention from the curriculum questions that are more important for purposes of our course. Don't worry about the legal process in these cases (but ask me if there's something you are wondering about): We are just focusing on the ideas about curriculum that are explicit or implicit in these opinions.

note: either a series of \*\*\* or \\\\\\\\\\\\\\\\\\\ will indicate places where I have deleted text from these opinions. Where a section of footnotes has been deleted, it may look like this:

- - - - -Footnotes- - - - -End Footnotes- - - - -

##### ○ [Boring v. Buncombe, US Ct App \(NC, 1998\) -- abridged for EDUC 897](#)

##### ○ ["Virgil"- US Dist Ct in Fla-1988 \(abridged for EDUC 897\)](#)

##### ○ [PICO -- US Sup Ct \(1982\) -- abridged for EDUC 897](#)

With seven Supreme Court Justices writing separate opinions in the Pico case, the combined text from those opinions is still a bit lengthy, even after my abridgments, so I have highlighted passages expounding the key points for our discussion. It's OK if you only read the highlighted passages in *Pico*, but the context of those highlighted passages is retained, so you can see the Justices' own explication of their meaning.)

##### ○ [Hafen: Hazelwood Reaffirms First Amendment Values](#)

#### 2. Professionalization vs. Deregulation

##### 1. [Cochran-Smith & Fries. Sticks, Stones, and Ideology: The Discourse of Reform in Teacher Education \(pdf\)](#)

##### 2. [Ravitch: A Brief History of Teacher Professionalism](#)

##### 3. [Raudenbush - Scientifically Based Research](#)

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February 5, 2005, Saturday, BC cycle

SECTION: Domestic News

LENGTH: 1419 words

HEADLINE: **School curriculum fights increasingly put children in culture war crossfire**

BYLINE: By MATT CRENSON, AP National Writer

In America's culture wars, schoolchildren are on the front lines.

From Maine to California, parents, teachers and school boards are squabbling - and sometimes suing one another - over what children should learn about sex, how to teach about religion's role in American history and how students ought to be introduced to the mystery of mankind's origins.

These arguments have been going on, with varying degrees of intensity, for decades. But President Bush's November victory - widely interpreted as defeat for liberals - seems to have emboldened the religious right and enlivened the debate.

"I think right now there's a lot of new energy among some conservative Christian groups," said Charles C. Haynes, a senior scholar at the Freedom Forum's First Amendment Center.

As usual, the teaching of evolution is a center of contention. Parents and school boards are currently involved in court battles over it in at least 13 states.

But there are other flashpoints.

In Cupertino, Calif., fifth-grade teacher Steven Williams has filed suit against the school district that employs him, claiming that his First Amendment rights are violated by a policy that requires him to submit for approval any classroom handout mentioning religion.

The Phoenix-based Alliance Defense Fund, which is representing Williams, says the school's policy effectively bans the teacher from handing out such important historical documents as the Declaration of Independence, which says: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator . . . "

Nonsense, say school district officials. In fact, the Declaration of Independence is right in the students' textbooks, district communications manager Jerry **Nishihara** points out. What's not in the textbooks -

and for good reason, school officials say - is the material Williams was handing out to students on his own.

There was, for example, a classroom handout entitled, "What Great Leaders Have Said About the Bible," containing quotes from nine U.S. presidents and another from Jesus. Some of these quotes, school officials say, are fictitious.

Then there is the text of a prayer book, supposedly George Washington's, that Williams handed out to students. Historians concluded in the 19th century that the book wasn't Washington's, although it may have belonged to one of his descendants.

At the root of disagreements like the one in Cupertino are feelings on the part of conservatives that schools go too far in trying to avoid violating the constitutional separation of church and state.

In suburban Dallas, for example, a school district is being sued for prohibiting students from exchanging cards and candy canes with Christmas-specific messages at a winter holiday party.

"We're just sick and tired of all this criticism of all these foundational things that's made America a great country," said Jordan Lorence, senior counsel for the Alliance Defense Fund.

But conservatives and fundamentalist Christians aren't always the plaintiffs in such lawsuits.

Michael Newdow, a California man who complains that the inclusion of the words "under God" in the pledge of allegiance violate his 10-year-old daughter's right to religious freedom, is going back to court.

Last June, the U.S. Supreme Court threw out his original complaint on technical grounds, saying Newdow could not sue on his daughter's behalf because he is divorced and does not have full custody. This time, his petition has been joined by other parents whose custody rights are not at issue.

Other culture battles in the schools involve what children should be learning about sex.

Texans, for example, squabbled recently over how textbooks should define marriage, and whether books used in health classes should mention condoms or contraception as an option for sexually active teenagers.

In both cases, conservatives won the day. Textbooks in use in public schools in Texas explicitly define marriage as between a man and a woman. And they present only one option for avoiding pregnancy and sexually transmitted diseases - abstinence.

Books on all kinds of subjects continue to be a perennial source of controversy in schools. Year after year, parents object to the books their children are assigned or check out of school libraries, often citing language or sexual material they consider offensive.

According to the American Library Association, there have been widespread objections to the children's book "King and King," which tells the tale of a gay royal couple.

Religious conservatives also object to "occult" themes such as sorcery and witchcraft. Among their top targets: the wildly popular Harry Potter series.

Meanwhile, the argument over the teaching of evolution, which has been raging since before William Jennings Bryan and Clarence Darrow faced off in the famous Scopes trial in Tennessee nearly 80 years ago, shows no signs of abating.

Last October, for example, the Dover, Pa., school board voted to require the teaching of "intelligent design" as an alternative to evolution in ninth grade biology classes. "Intelligent design," a favored theory of religious conservatives, argues that life is too complex to have arisen solely through evolution, and that the guiding hand of a superior being must be behind it.

"Anyone with half a brain should have known we were going to be sued," said school board member Angie Yingling, who initially supported the idea but has since reconsidered.

The American Civil Liberties Union sued in December, on behalf of eight families, arguing that intelligent design is not science, but an attempt to inject religion into science classes.

The Discovery Institute, a Seattle-based think tank that promotes intelligent design, argues that if evolution were taught more skeptically, students would come to recognize that the theory alone cannot explain the incredible complexity of life and the biological processes that produced it.

However, since intelligent design is a new theory, "we don't think it should be mandated" in schools, said John West, the associate director of the Center for Science and Culture at the Discovery Institute.

"The thing is, there's very little in intelligent design to teach," Glenn Branch, deputy of the National Center for Science Education, in Oakland, Calif., insisted. "The big uniting principle of intelligent design is that evolution is bad."

Meanwhile, in Georgia's Cobb County, a campaign by parents convinced the school board to require a warning sticker on biology textbooks stating that "evolution is a theory, not a fact" and imploring students to consider the books' contents "with an open mind."

The ACLU sued, and a court ordered the stickers removed.

Ken Miller, who co-authored the biology textbook used in Cobb County, called the sticker a failed attempt at compromise. The sticker, he said, "is factually incorrect, it is scientifically misleading and it is very poor educational policy."

Miller, a professor of cell biology at Brown University, said that the authors of the sticker, like many critics of evolution, do not understand what the word "theory" means in science. Scientific theories are not conjectures, he said; they are exhaustively researched, overarching explanations of how the world works.

The theory of evolution, he said, is like the theory of gravitation, atomic theory, the germ theory of disease - explanations of the natural world exhaustively supported by experiment and observation. In science, Miller said, "the word 'theory' actually implies a higher level of understanding than the word 'fact.'"

Supporters of evolution have consistently prevailed in court battles in recent decades. But "if the scientists think they have won, they should think again," said Haynes, of the First Amendment Center.

Polls consistently show fewer than half of Americans believe evolutionary theory is well supported by evidence. In a recent Gallup poll, 45 percent of those surveyed believe God created humans more or less in their current form about 10,000 years ago.

Haynes recommends a truce. Letting some of the creationist and intelligent design arguments into the curriculum could help students understand how science and religion have interacted over the centuries, he said.

Perhaps if students engage in the very same arguments their elders are struggling with, Haynes suggested, they might gain a better appreciation for the contentious world we live in.

GRAPHIC: AP Photos of Jan. 31: NY317-318, GAMAR319-320

LOAD-DATE: February 6, 2005

MARGARET BORING, Plaintiff-Appellant, v. THE BUNCOMBE COUNTY BOARD OF EDUCATION; CHARLES JOHNSON, Chairman, MICHAEL ANDERS; TERRY ROBERSON; BRUCE GOFORTH; BILL WILLIAMS; GRACE BRAZIL; WENDELL BEGLEY; DR. J. FRANK YEAGER, Superintendent; FRED IVEY, Principal, each in his/her individual and official capacity, Defendants-Appellees. NATIONAL SCHOOL BOARDS ASSOCIATION; NORTH CAROLINA SCHOOL BOARDS ASSOCIATION; VIRGINIA SCHOOL BOARDS ASSOCIATION COUNCIL OF SCHOOL ATTORNEYS, Amici Curiae.

No. 95-2593

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

136 F.3d 364; 1998 U.S. App. LEXIS 2053; 13 BNA IER CAS 1189

March 4, 1997, Argued  
February 13, 1998, Decided

**SUBSEQUENT HISTORY:** [\*\*1] Certiorari Denied October 5, 1998, Reported at: 1998 U.S. LEXIS 4802.

## OPINION

WIDENER, Circuit Judge:

The only issue in this case is whether a public high school teacher has a First Amendment right to participate in the makeup of the school curriculum through the selection and production of a play. We hold that she does not, and affirm the judgment of the district court dismissing the complaint.

### I.

Margaret Boring was a teacher in the Charles D. Owen High School in Buncombe County, North Carolina. In the fall of [\*\*3] 1991, she chose the play *Independence* for four students in her advanced acting class to perform in an annual statewide competition. She stated in her amended complaint that the play "powerfully depicts the dynamics within a dysfunctional, single-parent family - a divorced mother and three daughters; one a lesbian, another pregnant with an illegitimate child." She alleged that after selecting the play, she notified the school principal, as she did every year, that she had chosen *Independence* as the play for the competition. She does not allege that she gave the principal any information about the play other than the name.

The play was performed in a regional competition and won 17 of 21 awards. Prior to the state finals, a scene from the play was performed for an English class in the school. Plaintiff informed the teacher of that class that the play contained mature subject matter and suggested to the teacher that the students bring in parental permission slips to see the play. Following that performance, a parent of one of the students in the English class complained to the school principal, Fred Ivey, who then asked plaintiff for a copy of the script. After reading the play, [\*\*4] Ivey informed plaintiff that she and the students would not be permitted to perform the play in the state competition.

Plaintiff and the parents of the actresses performing the play met with Ivey urging him not to cancel the production. Ivey then agreed to the production of the play in the state competition, but with certain portions deleted. The complaint states that the students performed the play in the state competition and won second place. The complaint does not state, but we assume, that the play was performed in accordance with Ivey's instructions.

In the summer of 1991 the school moved to a new facility which had a maple stage floor in the auditorium. At the time of the move, plaintiff discussed with Ivey the problems with mounting productions on the maple floor. Ivey suggested using plywood as a temporary surface over the maple floor but instructed plaintiff to obtain approval before doing any construction work in the auditorium. In the spring of 1992, plaintiff advised Ivey that she needed to construct sets for the production of a musical. Ivey responded that he understood the need for sets and that prior approval was intended to apply only to the construction of fixtures. [\*\*5] In preparation for the musical, the surface of the maple floor of the stage was covered with plywood fixed to the floor with screws. When the plywood was removed after the play, the floor had to be refinished because of the holes left by the screws.

In June 1992, Ivey requested the transfer of Margaret Boring from Owen High School, citing "personal conflicts resulting from actions [\*367] she initiated during the course of this school year." Superintendent Yeager approved the transfer stating that she had failed to follow the school system's controversial materials policy in producing the play. Plaintiff states that the purpose of the controversial materials policy is to give the parents some control over the materials to which their children are exposed in school. She alleges that at the time of the production, the controversial materials policy did not cover dramatic presentations, and that the school's policy was amended subsequently to include dramatic presentations.

Plaintiff appealed the transfer to the Board of Education. A hearing was held on September 2, 1992, following which the Board upheld the transfer. Plaintiff alleges that prior to the hearing there was considerable public [\*\*6] discussion of the transfer, including that the play was obscene and that she was immoral. She alleges that members of the school board asked questions at the hearing that demonstrated their consideration of matters outside the evidence presented at the hearing.

Plaintiff filed the present action on January 10, 1994. Her amended complaint claims that her transfer was in retaliation for expression of unpopular views through the production of the play and thus in violation of her right to freedom of speech under the First and Fourteenth Amendments and Article I, § 14 of the North Carolina Constitution. She also claimed a violation of due process under the Fourteenth Amendment and Article I, § 19 of the North Carolina Constitution based on the allegation that members of the school board considered information that was not presented at the hearing; and a violation of a liberty interest under Article I, §§ 1 and 19 of the North Carolina Constitution.

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Plaintiff appeals only the dismissal of her federal First Amendment claim. \*\*\* We now affirm the judgment of the district court holding that the plaintiff's selection and production of the play *Independence* as part of the school's curriculum was not protected speech under the First Amendment.

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## II.

The district court held that the play was a part of the school curriculum and:

Since plaintiff has not engaged in protected speech, her transfer in retaliation for the play's production did not violate Constitutional standards. (A. 71)

With this holding, the plaintiff takes issue on appeal as follows:

Whether the district court erred in holding that plaintiff's act of selecting, producing and directing a play did not constitute "speech" within the meaning of the First Amendment. (Boring's brief, p. vi)

We begin our discussion with the definition of curriculum:

3: all planned school activities including besides courses of study, organized play, athletics, dramatics, clubs, and homeroom program. [\*368]

Webster's Third New International Dictionary, 1971, p. 557.

Not only does Webster include dramatics within the definition of curriculum, the Supreme Court does the same. In *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 98 L. Ed. 2d 592, 108 S. Ct. 562 (1988), a case involving student speech [\*\*9] in a school newspaper which was edited by the principal of a high school, the Court distinguished cases which require a school to tolerate student speech from those cases in which the school must affirmatively promote student speech. Although in different context, the reasoning of the Court as to what constitutes the school curriculum is equally applicable here.

The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences [footnote omitted].

*Hazelwood*, 484 U.S. at 271.

It is plain that the play was curricular from the fact that it was supervised by a faculty member, Mrs. Boring; it was performed in interscholastic drama competitions; and the theater program at the high school was obviously [\*\*10] intended to impart particular skills, such as acting, to student participants. These factors demonstrate beyond doubt that "students, parents, and members of the public might reasonably perceive [the production of the play *Independence*] to bear the imprimatur of the school." *Hazelwood*, 484 U.S. at 271.

So there is no difference between Webster's common definition and that of *Hazelwood*.

### III.

With these thoughts in mind, we are of opinion that the judgment of the district court is demonstrably correct.

#### A.

Plaintiff's selection of the play *Independence*, and the editing of the play by the principal, who was upheld by the superintendent of schools, does not present a matter of public concern and is nothing more than an ordinary employment dispute. That being so, plaintiff has no First Amendment rights derived from her selection of the play *Independence*.



This principle was illustrated in *Connick v. Myers*, 461 U.S. 138, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983), in which the Court upheld the firing of an assistant district attorney who had circulated a questionnaire questioning the manner in which the district attorney operated that office. The Court held that **[\*\*11]** "if Myers' questionnaire cannot be fairly characterized as constituting speech on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge." *Connick* at 146. Because the questionnaire almost wholly concerned internal office affairs rather than matters of public concern, the court held that, to that extent, it would not upset the decision of the district attorney in discharging Myers. <sup>n1</sup> It stated:

We hold only that when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.

*Connick* at 147.

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In a case on facts so near to those in the case at hand as to be indistinguishable, the Fifth Circuit came to the conclusion we have just recited in *Kirkland v. Northside Independent School District*, 890 F.2d 794 (5th Cir. 1989), cert. denied, 496 U.S. 926, 110 S. Ct. 2620, 110 L. Ed. 2d 641 (1990). *Kirkland* was a case in which the employment contract of a high school history teacher was not renewed. He alleged the nonrenewal was a consequence of, and in retaliation for, his use of an unapproved reading list in his world history class. The high school had provided the teacher with a supplemental **[\*\*13]** reading list for his history class along with a copy of the guidelines used to develop and amend that list. He was aware of the guidelines and understood that if he was dissatisfied, a separate body of reading material could be used in his class if he obtained administrative approval. The teacher, however, used his own substitute list and declined to procure the approval of the school authorities for his substitute list. The authorities at his high school then recommended that his contract not be renewed at the end of the next academic year, which was affirmed by the board of trustees, much like Margaret Boring's transfer was affirmed by the school board in this case after a recommendation by the administrative authorities.

The court held that to establish his constitutional claim, *Kirkland* must have shown that his supplemental reading list was constitutionally protected speech; not different from Mrs. Boring's selection of the play *Independence* in this case. It went on to hold that under *Connick v. Myers*, 461 U.S. 138, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983), the question of whether a public employee's speech is constitutionally protected depends upon the public or private **[\*\*14]** nature of such speech. It decided that the selection of the reading list by the teacher was not a matter of public concern and stated that:

Although, the concept of academic freedom has been recognized in our jurisprudence, the doctrine has never conferred upon teachers the control of public school curricula. [footnote omitted]

890 F.2d at 800. And the *Kirkland* court recognized that *Hazelwood* held that public school officials, consistent with the First Amendment, could place reasonable restrictions upon the subject matter of a student published newspaper and also that schools are typically not public forums.

The court stated that "we hold only that public school teachers are not free, under the first amendment, to arrogate control of curricula," 890 F.2d at 802, and concluded as follows:

In summary, we conclude that Kirkland's world history reading list does not present a matter of public concern and that this case presents nothing more than an ordinary employment dispute. Accordingly, Kirkland's conduct in disregarding Northside's administrative process does not constitute protected speech . . . .

890 F.2d at 802.

Since plaintiff's dispute [\*\*15] with the principal, superintendent of schools and the school board is nothing more than an ordinary employment dispute, it does not constitute protected speech and has no First Amendment protection. Her case is indistinguishable from Kirkland's.

B.

The plaintiff also contends that the district court erred in holding that the defendants had a legitimate pedagogical interest in punishing plaintiff for her speech. Of course, by speech, she means her selection and production of the play *Independence*.

As we have previously set out, the play was a part of the curriculum of Charles D. Owen High School, where plaintiff taught. So this contention of the plaintiff is in reality not different from her first contention, that [\*370] is, she had a First Amendment right to participate in the makeup of the high school curriculum, which could be regulated by the school administration only if it had a legitimate pedagogical interest in the curriculum. While we are of opinion that plaintiff had no First Amendment right to insist on the makeup of the curriculum, even assuming that she did have, we are of opinion that the school administration did have such a legitimate pedagogical interest and that the [\*\*16] holding of the district court was correct.

Pedagogical is defined as "2: of or relating to teaching or pedagogy. EDUCATIONAL." Webster's Third New International Dictionary, 1971, p. 1663. There is no doubt at all that the selection of the play *Independence* was a part of the curriculum of Owen High School.

The makeup of the curriculum of Owen High School is by definition a legitimate pedagogical concern. Not only does logic dictate this conclusion, in only slightly different context the Eleventh Circuit has so held as a matter of law: "Since the purpose of a curricular program is by definition 'pedagogical' . . . ." *Searcey v. Harris*, 888 F.2d 1314, 1319 (11th Cir. 1989). *Kirkland*, 890 F.2d at 795, held the same in the same context present here.

If the performance of a play under the auspices of a school and which is a part of the curriculum of the school, is not by definition a legitimate pedagogical concern, we do not know what could be.

In our opinion, the school administrative authorities had a legitimate pedagogical interest in the makeup of the curriculum of the school, including the inclusion of the play *Independence*. The holding of the district court [\*\*17] was correct and the plaintiff's claim is without merit.

IV.

The question before us is not new. From Plato to Burke, the greatest minds of Western civilization have acknowledged the importance of the very subject at hand and have agreed on how it should be treated.

For a young person cannot judge what is allegorical and what is literal; anything that he

receives into his mind at that age is likely to become indelible and unalterable; and therefore it is most important that the tales which the young first hear should be models of virtuous thoughts.

Plato's Republic: Book II, Jowett Translation, Walter J. Black, Inc., 1942, p. 281.

The magistrate, who in favor of freedom thinks himself obliged to suffer all sorts of publications, is under a stricter duty than any other well to consider what sort of writers he shall authorize, and shall recommend by the strongest of all sanctions, that is, by public honors and rewards. He ought to be cautious how he recommends authors of mixed or ambiguous morality. He ought to be fearful of putting into the hands of youth writers indulgent to the peculiarities of their own complexion, lest they should teach the humors [\*\*18] of the professor, rather than the principles of the science.

Letter to a Member of the National Assembly (1791). IV, 23-34, found in The Philosophy of Edmund Burke, University of Michigan Press, 1960, p. 247.

And Justice Frankfurter, in concurrence, related the four essential freedoms of a university, which should no less obtain in public schools unless quite impracticable or contrary to law:

It is an atmosphere in which there prevail "the four essential freedoms" of a university--to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

Sweezy v. New Hampshire, 354 U.S. 234, 255, 263-264, 1 L. Ed. 2d 1311, 77 S. Ct. 1203 (1957) (quoting from a statement of a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand, including A. v. d. S. Centlivres and Richard Feetham, as Chancellors of the respective universities [footnote omitted]).

We agree with Plato and Burke and Justice Frankfurter that the school, not the teacher, has the right to fix the curriculum. Owens being a public school does not give the plaintiff any First Amendment [\*\*19] right to [\*371] fix the curriculum she would not have had if the school were private. Connick, 461 U.S. at 147.

Someone must fix the curriculum of any school, public or private. In the case of a public school, in our opinion, it is far better public policy, absent a valid statutory directive on the subject, that the makeup of the curriculum be entrusted to the local school authorities who are in some sense responsible, rather than to the teachers, who would be responsible only to the judges, had they a First Amendment right to participate in the makeup of the curriculum.

The judgment of the district court is accordingly AFFIRMED.

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**WILKINSON, Chief Judge, concurring:**

Traditionally, indeed for most of our history, education has been largely a matter of state and local concern. The dissents, however, approach education as a federal judicial enterprise. The dissenters seize

upon one loose, slippery, litigious phrase-- "legitimate pedagogical concern" -- and consign it to the mercies of the federal courts. They provide not one iota of guidance to local school administrators on the interpretation of this tantalizing formulation, nor could they. What is "legitimately pedagogical" will inevitably mean one thing to one judge or jury and something else to another.

This is precisely the process by which [federal civil rights legislation] becomes an instrument of disenfranchisement. In this case, that provision would remove from students, teachers, parents, and school boards the right to direct their educational curricula through democratic means. The curricular choices of the schools should be presumptively their own -- [\*372] the fact that such choices arouse deep feelings argues strongly for democratic means of reaching them. \*

-----Footnotes-----

\* The dissents contend that all the intrusiveness occasioned by the term "legitimate pedagogical concern" can be ascribed to the Supreme Court. It is obviously not the Supreme Court's use of the phrase to which I object, but the dissents' aggressive misapplication of it to all curricular decisions.

-----End Footnotes----- [\*\*22]

I would affirm the judgment of the district court.

#### **LUTTIG, Circuit Judge, concurring:**

I agree fully with the unassailable conclusion of the majority that the First Amendment does not require school boards to allow individual teachers in the Nation's elementary and secondary public schools to determine the curriculum for their classrooms consistent with their own personal, political, and other views.

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Notwithstanding its obvious recognition of the inapplicability of Hazelwood, the dissent would nevertheless import wholesale Hazelwood's test for evaluating restrictions on student speech within curricular activities into the entirely different context of teacher speech through the curriculum itself. That is, not only does the dissent deny, through simple omission of the relevant portions of text from the Court's opinion, that Hazelwood was concerned only with student speech; it fails to recognize the elementary difference between teacher in-class speech which is curricular, and teacher in-class speech which is noncurricular, because it assumes that every word uttered by a teacher in a classroom is curriculum. In the latter context of teacher in-class noncurricular speech, the teacher assuredly enjoys some First Amendment protection. In the former context of teacher in-class curricular speech, the teacher equally assuredly does not.

Of course, we are presented in this case not with student speech within a curricular activity (such as in Hazelwood), but rather, with teacher or employee speech literally through the curriculum itself. [\*\*27] The differences are plain -- the ultimate question for our resolution being whether a teacher has a constitutional right to define, at least in part, the school's curriculum, over the informed judgments of both school boards and parents. As noted, mistakenly applying Hazelwood in the first instance, and then, in its alternative reasoning, mistakenly assuming that every word spoken in the classroom by a teacher is a matter of public concern within the meaning of Connick and Pickering, the dissent would hold that every teacher has such a right. Today, however, the court properly concludes that she does not. Of course, were it otherwise -- that is, were every public school teacher in America to have the constitutional right to design (even in part) the content of his or her individual classes, as the dissent

would have it -- the Nation's school boards would be without even the most basic authority to implement a uniform curriculum and schools would become mere instruments for the advancement of the individual and collective social agendas of their teachers.

Rhetorically, the dissent attempts to minimize the radicalization of the educational process that would follow upon its [\*\*28] proposed holding, by assuring that school officials "must and [would] have final authority over curriculum decisions," and that all that would be required is the mere articulation by the school board of any "legitimate pedagogical concern." Even if these observations as to the dissent's proposed holding were true, the requirement that school systems across the country make their curriculum decisions in anticipation of litigation, and then engage in the time-consuming processes of discovery, pretrial litigation, and trial in federal court to defend as "legitimately pedagogical" their individual curriculum decisions, would itself represent a crushing burden, not to mention a surrender to unelected federal judges of the "final authority over curriculum decisions" that is properly that of school boards and parents.

But one should be under no illusions that the particular requirement of "legitimate pedagogy" that the dissent has in mind could ever be so easily satisfied or that, in reality, the dissent contemplates final decisionmaking authority for curriculum resting with the Nation's schoolboards. The indisputable subtext of the dissent, which could hardly go unnoticed, is that "legitimate" pedagogy [\*\*29] will [\*374] be not what the parents and schoolboards decide it should but, rather, what the judges say it will be. If any confirmation of this is necessary, one need look no further than to Judge Hamilton's separate opinion, in which he has already concluded, without even so much as an allegation to this effect by the plaintiff, that the defendants, "all for the sole purpose of shielding the principal and the Board from the wrath of the public outcry," "targeted Margaret Boring as a scapegoat and used her to shield them from the 'heat' of the negative outcry resulting from the performance of Independence." Post at 29-30 (Hamilton, J., dissenting).

Judge Wilkins and Judge Williams join in this concurrence.

### **HAMILTON, Circuit Judge, dissenting:**

I join in Judge Motz's persuasive dissenting opinion. I write separately to emphasize several points. First, the facts as alleged in the complaint suggest strongly that this case is far from an "ordinary employment dispute," i.e., a case involving only speech of a private concern, as the majority dismissively states. Ante at 10. Instead, as gleaned from a fair reading of the complaint, this is a case [\*\*30] about a school principal, Fred Ivey, and a county school board, the Buncombe County Board of Education (the Board), who targeted Margaret Boring as a scapegoat and used her to shield them from the "heat" of the negative outcry resulting from the performance of Independence. This is also a case about a dedicated teacher who, contrary to the implication of the majority and concurring opinions, in no way violated any aspect of an approved curriculum; who followed every previously required standard set forth for the selection and approval of the school production; who, when requested to do so, redacted certain portions of the production and only permitted its performance after that performance had been explicitly approved by her principal, Mr. Ivey; yet, who nevertheless lost her position as a result of the production, all for the sole purpose of shielding the principal and the Board from the wrath of the public outcry. \*\*\* Because this dispute originated in, and was entirely the result of, public debate, I believe that the Board, as a public employer that allegedly acted in response to that public debate, should be required to articulate some legitimate, pedagogical concern for restricting Boring's speech. This burden is hardly onerous, and it is the least we can require of public officials charged with making curriculum decisions.

Second, it should not be overlooked that this case presents one simple question: Can the Board censor

Boring's speech without proffering any legitimate pedagogical concern justifying the restriction? Judge Motz's dissent persuasively explains why the answer to this simple question is no. In all likelihood, if remanded, this case would be resolved in favor of the Board at the summary judgment stage, as several pedagogical concerns probably justified the Board's action. At this early stage, ... however, we have no basis for determining whether the Board's restriction reasonably related to legitimate pedagogical concerns. [\*\*32] For this reason, the judgment of the district court should be reversed and the matter remanded for further proceedings.

A final note concerning the concurring opinions of Chief Judge Wilkinson and Judge Luttig. These opinions attack the dissenting opinion as consigning to the federal judiciary the responsibility for managing our public schools. Nothing could be further from reality. What these opinions ignore, however, is that any limited intrusion, whatever it may be, is precisely the intrusion required by the Supreme Court's decision in *Hazelwood*. The Supreme Court established the *Hazelwood* standard and, in doing so, clearly envisioned some minimal intrusion into public school management insofar as school administrators would be required to articulate a legitimate pedagogical concern for censoring a student's speech. The Supreme Court apparently [\*\*375] did not believe this standard to be too ambiguous for district and appellate courts to apply, nor did it apparently believe this standard to place an unjustly onerous burden on school officials. Therefore, even if the parade of horrors feared by the concurrences came to pass, it is a parade of horrors created by a standard articulated [\*\*33] by the Supreme Court and one to which we are bound to adhere until the Supreme Court states otherwise.

#### **DIANA GRIBBON MOTZ, Circuit Judge, dissenting:**

The majority holds that a teacher's speech in selecting, producing, and directing a school play deserves "no First Amendment protection." Ante at 15. I cannot agree and therefore respectfully dissent. In my judgment, the district court erred in dismissing Margaret Boring's complaint for failure to state a claim upon which relief can be granted.

School administrators must and do have final authority over curriculum decisions. But that authority is not wholly unfettered. Like all other state officials, they must obey the Constitution. The Supreme Court has long recognized that the Constitution, specifically the First Amendment, "does not tolerate laws that cast a pall of orthodoxy over the classroom." *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L. Ed. 2d 629, 87 S. Ct. 675 (1967). See also *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969) ("teachers" no less than "students" do not "shed their constitutional rights to freedom of [\*\*34] speech or expression at the schoolhouse gate"). Thus, teachers' in-class speech retains some, albeit limited, First Amendment protection, as is explained in detail in the panel opinion in this case. ... To that opinion, I add only a few thoughts.

I.

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The Board may indeed have "legitimate pedagogical concerns" that are "reasonably related" to its disciplinary [\*\*37] decision. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273, 98 L. Ed. 2d 592, 108 S. Ct. 562 (1988). But, of course, Boring alleges no such concerns and the Board has not yet stated any. Hence, nothing in the record before us, at this early stage in the proceedings, allows us to draw such a conclusion. Prior to today, every court to consider the matter has required that school administrators offer some evidence -- if only an affidavit -- to establish the legitimacy of the pedagogical concerns purportedly related to their actions. See *Boring*, 98 F.3d at 1479. The majority, however, concludes that even this slight evidentiary showing is unnecessary. n1 The majority maintains that because "pedagogical" is defined as "educational," any and every curriculum decision made by school administrators is "by definition a legitimate pedagogical concern" and thus constitutionally acceptable. Ante at 16. [footnote omitted]

The Supreme Court's careful reasoning in *Hazelwood*, an opinion authored by Justice White and joined by all members of the present Court then sitting (the Chief Justice, and Justices Stevens, O'Connor, and Scalia), offers no support for this astonishing conclusion. n2 Rather, in *Hazelwood* the Court held that school administrators' curriculum choices did not offend the First Amendment "so long as their actions are reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273 (emphasis added). Indeed, the Court went on to recognize that, on occasion, a particular curriculum decision may have "no valid educational purpose" and that in such an instance "the First Amendment is so directly and sharply implicated as to require judicial intervention." *Id.* (citation and internal quotation omitted; alteration in original). Thus, the Supreme Court in *Hazelwood* clearly did not hold, as the majority does here, that each and every curriculum decision is "by definition a legitimate pedagogical concern." Ante at 16 (emphasis added). Instead, the Court meticulously analyzed the speech before it and concluded that the school administrators had [\*\*39] demonstrated -- through the testimony of several witnesses -- the legitimacy of their pedagogical concerns and that for this reason "no violation of First Amendment rights occurred." 484 U.S. 260 at 275-76, 108 S. Ct. 562, 98 L. Ed. 2d 592. [footnote omitted]

Nor do the two cases upon which the majority relies, ante at 16, support its holding that each and every curriculum decision of a school administration is "by definition a legitimate pedagogical [\*\*40] concern." In neither *Kirkland v. Northside Indep. Sch. Dist.*, 890 F.2d 794 (5th Cir. 1989); cert. denied, 496 U.S. 926, 110 L. Ed. 2d 641, 110 S. Ct. 2620 (1990), nor *Searcey v. Harris*, 888 F.2d 1314 (11th Cir. 1989), did the courts hold that the plaintiffs failed to state a claim upon which [\*377] relief could be granted or that school administrators' decisions were motivated by legitimate pedagogical concerns simply because those decisions concerned the curriculum.

In *Kirkland*, the Fifth Circuit did conclude that the teacher "suffered no impairment of his First Amendment rights." *Kirkland*, 890 F.2d 794 at 795. But that teacher, Timothy Kirkland, unlike Boring, admitted that he refused to follow the school's well-established rules. For example, he admitted using a "nonapproved reading list." *Kirkland*, 890 F.2d at 795 (emphasis added). Boring, by contrast, alleges that her principal initially acquiesced in her choice and production of *Independence*. Moreover, *Kirkland* did not concede, as Boring does, that the school authorities were entitled to the broad discretion vested in them under the *Hazelwood* standard. Rather, *Kirkland* contended that "his control of the world history class curriculum [was] [\*\*41] unlimited." *Kirkland*, 890 F.2d at 801 (emphasis added). The *Kirkland* court properly rejected this argument. *Id.* But the Fifth Circuit's reasoning in *Kirkland* does not foreclose Boring's quite different and far more modest contention that although administrators may discipline a teacher even when the teacher does follow the school's rules, they may do so only "so long as [administrators'] actions are reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273. Actually, rather than foreclosing this reasoning, the *Kirkland* court seemed to embrace it: "Our decision should not be misconstrued . . . to suggest that public school teachers foster free debate in their classrooms only at their own risk or that their classrooms must be 'cast with a pall of orthodoxy.'" *Kirkland*, 890 F.2d at 801-02.

In *Searcey*, the Eleventh Circuit recognized, as I do, that curricular programs by nature have pedagogical purposes. See 888 F.2d at 1319. But it did not hold, as the majority does here, that each and every curricular decision is "by definition a legitimate pedagogical concern." Ante at 16 (emphasis added). In fact, the Eleventh [\*\*42] Circuit's holding stands in stark contrast to that set forth by the majority. The *Searcey* court upheld a judgment against a school board precisely because the board offered "no evidence" to support its challenged requirement. *Searcey*, 888 F.2d at 1322 (emphasis added). The court reasoned "we cannot infer the reasonableness of a regulation from a vacant record." *Id.* (citing *Hazelwood*, 484 U.S. at 275 & n.8). Moreover, *Searcey* expressly rejected the school board's argument that even though it failed to offer any evidentiary support, a court must defer to its decision; the court concluded that this would "overstate[ ] the deference a court must pay to School Board decisions." 888

F.2d 1314 at 1321. The majority erroneously relies on Searcey to do precisely what the Searcey court itself would not do -- overstate the deference due school board decisions and infer the reasonableness of such decisions from a vacant record.

The Buncombe County Board of Education may possess legitimate pedagogical concerns reasonably related to its discipline of Boring. But, to date, the Board has not even attempted to state those concerns, let alone offered a scintilla of evidence [\*\*43] establishing them. On this record, I do not see how a court can conclude, as the majority does, that "the school administrative authorities had a legitimate pedagogical interest" justifying discipline of Boring and dismissal of her complaint. Ante at 16.

## II.

Like the district court, Boring, and the two associations that filed amici briefs on behalf of the School Board (the National School Boards Association and the Virginia School Board Association Council of School Board Attorneys), I believe that the standard articulated in Hazelwood, not that set forth in Connick v. Myers, 461 U.S. 138, 75 L. Ed. 2d 708, 103 S. Ct. 1684 (1983), provides the appropriate test for analyzing the speech at issue in this case. But, contrary to the majority's suggestion, even if Connick were applicable here, it would fail to provide an alternative basis on which to dismiss Boring's complaint.

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## III.

As recognized at the outset of this dissent and in the panel opinion, school administrators [\*380] must "be permitted to have the final [\*\*51] say in setting the appropriate curriculum so that students are not exposed to material that detracts from or impedes the school's pedagogical mission." Boring, 98 F.3d 1474 at 1483. Yet, the First Amendment lives in the classroom as it does elsewhere. Indeed, as the Supreme Court stated several decades ago:

The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation.

Shelton v. Tucker, 364 U.S. 479, 487, 5 L. Ed. 2d 231, 81 S. Ct. 247 (1960) (internal quotation omitted). Justice Stewart wrote these words in the course of holding that the First Amendment prevented public schools from compelling teachers [\*\*52] to list all organizations to which they had belonged or contributed in the recent past. But the words apply with equal force here. Rather than "vigilantly protecting . . . constitutional freedoms . . . in the community of American schools," the majority eliminates all constitutional protection for the in-class speech of teachers. By holding that public school administrators can constitutionally discipline a teacher for in-class speech without demonstrating, or even articulating, some legitimate pedagogical concern related to that discipline, the majority extinguishes First Amendment rights in an arena where the Supreme Court has directed they should be brought "vividly into operation." For these reasons, I must respectfully dissent.



Monya G. Virgil, James Virgil, Claudia H. Johnson, and Susan G. Davis, Plaintiffs, v. School Board of Columbia County, Florida, and Silas Pittman as Superintendent of the Columbia County School System, Defendants  
No. 86-1030-Civ-J-14

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA,  
JACKSONVILLE DIVISION

677 F. Supp. 1547; 1988 U.S. Dist. LEXIS 877  
January 30, 1988, Decided, January 29, 1988, Filed

Susan H. Black, United States District Judge

I. *Undisputed Facts*

the Court makes the following findings of fact.

From approximately 1975 to the present, Columbia High School has offered a two-semester course entitled "Humanities to 1500" to its students. In 1985, the school designed the course for eleventh- or twelfth-grade students, and prescribed as textbooks Volumes I and II of *The Humanities: Cultural Roots and Continuities* (M. Witt, *et al.* ed. 1980) [hereinafter "*Humanities*"]. In the previous [\*\*2] year, the Florida Department of Education had approved these textbooks for humanities courses and placed them on its Catalog of State-Adopted Instructional Materials for secondary school students.

Among the selections in Volume I of *Humanities* are English translations of the play *Lysistrata*, written by the Athenian playwright Aristophanes in approximately 411 B.C., and the narrative poem *The Miller's Tale*, written by the English poet Geoffrey Chaucer in approximately 1380 A.D. Although neither *Lysistrata* nor *The Miller's Tale* were required or assigned reading in the humanities course, a portion of *Lysistrata* was read aloud in class during a session of the humanities course in the first semester of the 1985-86 school year. Among the students in the class on that day was the daughter of The Reverend and Mrs. Fritz M. Fountain.

In the spring of 1986, The Reverend and Mrs. Fountain filed a formal complaint regarding Volume I of *Humanities* with the defendant School Board of Columbia County, the government entity responsible for [\*1549] administration of the Columbia County School System [hereinafter "School Board"]. The Fountains also filed a Request for Examination [\*\*3] of School Media on a form provided by the defendants.

In response to this complaint, the School Board first adopted a "Policy on Challenged State Adopted Textbooks," which established the mechanisms for addressing any challenges to textbooks in use in the school system. Next, pursuant to the newly-enacted policy, the School Board appointed an advisory committee to review Volume I of *Humanities*. The advisory committee reviewed Volume I and recommended that the textbook be retained in the curriculum, but that *Lysistrata* and *The Miller's Tale* not be required reading in the humanities course.

At its April 22, 1986, meeting, the School Board considered the advisory committee's report on Volume I. It also heard from the defendant Silas Pittman, the Superintendent of the Columbia County School System. Pittman disagreed with the committee's findings and recommended either that *Lysistrata* and *The Miller's Tale* be deleted from Volume I or that the book itself be discontinued from use in the school's curriculum. The School Board agreed with the latter proposal, voting to discontinue any future use of Volume I in the curriculum. On a subsequent date, the Board members provided [\*\*4] the

following reasons for their decision:

1. The sexuality in the two selections.
2. A belief that portions of the two selections were excessively vulgar in language and subject matter, regardless of the value of the works as literary classics.
3. A belief that the subject matter of the selections was immoral, insofar as the selections involved graphic, humorous treatment of sexual intercourse and dealt with sexual intercourse out of wedlock.
4. A belief that the sexuality of the selections was violative of the socially and philosophically conservative mores, principles and values of most of the Columbia County populace.
5. A belief that the subject matter and language of the selections would be offensive to a substantial portion of the Columbia County populace.
6. A belief that the two selections were not necessary for adequate instruction in the course; nor was this particular textbook, in its entirety, necessary for instruction in the course.
7. A belief that the two selections were inappropriate to the age, maturity, and development of the students in question.

Stipulation Concerning Board Reasons, filed on October 14, 1987.

Pursuant to the School Board's April [\*\*5] 22, 1986, decision, Volume I of *Humanities* was placed in a storeroom and has been kept there ever since. Thereafter, Volume II of *Humanities* has been used as the textbook for both semesters of the humanities course. In addition, both Volumes I and II have been placed in the school library and made available for student use. Other adaptations and translations of *Lysistrata* and *The Miller's Tale* are also maintained in the school library.

In their Motion for Summary Judgment, the defendants contend that the School Board's decision to remove Volume I of *Humanities* falls within the scope of its broad discretion regarding establishment of high school curriculum. According to the defendants, the School Board simply performed its proper function of transmitting community values by removing materials that it considered to be vulgar or indecent.

The plaintiffs argue in their Motion for Summary Judgment that despite the School Board's broad discretion regarding curriculum, the Board must nonetheless exercise that discretion in a manner that comports with the first amendment. According to the plaintiffs, removal of the textbook in the present case violated the first amendment [\*\*6] [\*1550] because the School Board improperly attempted to deny the students access to views which differ from its fundamentalist religious orthodoxy. n1

-----Footnotes-----

n1 The plaintiffs do not contend that the defendants violated the "establishment of religion" clause of the first amendment, and the Court, therefore, does not consider the issue.

-----End Footnotes-----

## II. *Conclusions of Law*

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Based on the Supreme Court's recent decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 56 U.S.L.W. 4079, 98 L. Ed. 2d 592, 108 S. Ct. 562 (U.S. 1988), the Court finds that the defendants acted within their broad range of discretion in determining the educational suitability of the curricular materials in question.

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Initially, the Court must determine whether the pedagogical goals motivating the School Board's decision in this case were legitimate ones. The members of the School Board identified two specific factors as having given rise to their decision to remove Volume I of *Humanities*: "the sexuality in the two selections" [\*\*13] and the selections' "excessively vulgar . . . language and subject matter." The remainder of the reasons supplied by the Board members simply amplify why they believed that vulgar and sexually explicit materials could properly be removed from the curriculum. According to the Board members, the content of the subject materials violated the "conservative mores" of the community and was "inappropriate to the age, maturity and development of the students."

The plaintiffs contend that these reasons highlight the actual purpose of the Board members in removing the subject materials from the humanities curriculum, which was to impose their fundamentalist Christian beliefs on the students. According to the plaintiffs, such an attempt to deny the students access to viewpoints differing from the Board members' religious orthodoxy is essentially what the first amendment forbids.

The Court agrees with the plaintiffs that the School Board's decision reflects its own restrictive views of the appropriate values to which Columbia High School students should be exposed. The Court finds, however, that such content-based decision-making regarding curriculum is permissible under the standards set forth [\*\*14] in *Kuhlmeier*. The Court in *Kuhlmeier* held that educators may limit both the "style and content" of curricular materials if their action is reasonably related to legitimate pedagogical concerns. 56 U.S.L.W. at 4082. n6 The Court further held that denying students access to "potentially sensitive topics" such as sexuality is a legitimate pedagogical end. *Id.* But see *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943) (schools may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion"). Because this pedagogical goal is the uncontroverted justification for the School Board's decision in the present case, this Court need only consider whether the decision of the School Board was reasonably related to this goal.

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The Court faces a number of difficulties in making this determination. First, the Court finds it difficult to apprehend the harm which could conceivably be caused to a group of eleventh- and twelfth-grade students by exposure to Aristophanes and Chaucer. Indeed, authorities on Western literature are virtually unanimous in their high praise for the works of these authors. See, e.g., U. Viola, *Greek* [\*\*15] and *Roman Classics*, (1965), at 328 (Aristophanes's comedies "are considered among the greatest ever written"); *Major British Writers*, (G.B. Harrison, ed. 1967), at 1 (Chaucer's name "stands in the annals of English literature second only to that of Shakespeare").

[\*1553] Second, the Court has a more general concern regarding the breadth of measures that may be

taken to protect students from materials containing sexuality or vulgarity. The plaintiffs argue in this case that the School Board's decision to remove Volume I in its entirety, rather than to take the less drastic measure of warning students of the potentially sensitive nature of two particular works, violates the established first amendment principle that restrictions on speech must be "narrowly tailored" to achieve the government's legitimate interests. Under the standard set forth in *Kuhlmeier*, however, a School Board's decision to remove curricular materials will be upheld if it is reasonable, even where that decision is not the least restrictive of student speech. See *Kuhlmeier*, 56 U.S.L.W. at 4083 (upholding principal's decision to excise two pages of newspaper rather than objectionable articles within those two [\*\*16] pages). See generally *Cornelius v. NAACP Legal Defense and Education Fund, Inc.*, 473 U.S. 788, 808, 87 L. Ed. 2d 567, 105 S. Ct. 3439 (1985) (government's limitation of speech in nonpublic forum need only be reasonable; it need not be the most reasonable or the only reasonable limitation). Thus, under *Kuhlmeier*, this Court assumes the limited role of determining whether sexuality or vulgarity are at all present in the removed materials, and if so, determining whether the measure taken to remove the sexuality and vulgarity was at all reasonable.

The Court finds that sexuality and vulgarity are both unquestionably present in the contested materials. The plots of both *Lysistrata* and *The Miller's Tale* involve sexual relations: *Lysistrata* concerns the attempt by the women of a community to put an end to an ongoing war by denying the men sexual intercourse; *The Miller's Tale* concerns a sexual affair between a divinity student and his landlord's wife. In addition, both works contain passages which may reasonably be considered to be sexually explicit n7 or vulgar. n8

-----Footnotes-----

n7 An example of a sexually explicit passage may be found in *Lysistrata*, where the heroine Lysistrata leads the women of the community in a pledge of allegiance designed to convince the men of the community to end the Peloponnesian Wars.

LYSISTRATA Lampito: all of you women: come, touch the bowl, and repeat after me:

I WILL HAVE NOTHING TO DO WITH MY HUSBAND OR MY LOVER

KALONIKE I will have nothing to do with my husband or my lover

LYSISTRATA THOUGH HE COME TO ME IN PITIABLE CONDITION

KALONIKE Though he come to me in pitiable condition

(Oh, Lysistrata! This is killing me!)

LYSISTRATA I WILL STAY IN MY HOUSE UNTOUCHABLE

KALONIKE I will stay in my house untouchable

LYSISTRATA IN MY THINNEST SAFFRON SILK

KALONIKE In my thinnest saffron silk

LYSISTRATA AND MAKE HIM LONG FOR ME.

KALONIKE And make him long for me.

LYSISTRATA I WILL NOT GIVE MYSELF

KALONIKE I will not give myself

LYSISTRATA AND IF HE CONSTRAINS ME

KALONIKE And if he constrains me

LYSISTRATA I WILL BE AS COLD AS ICE AND NEVER MOVE

KALONIKE I will be as cold as ice and never move

LYSISTRATA I WILL NOT LIFT MY SLIPPERS TOWARD THE CEILING

KALONIKE I will not lift my slippers toward the ceiling

LYSISTRATA OR CROUCH ON ALL FOURS LIKE THE LIONESS IN THE CARVING

KALONIKE Or crouch on all fours like the lioness in the carving

LYSISTRATA AND IF I KEEP THIS OATH LET ME DRINK FROM THIS BOWL

KALONIKE And if I keep this oath let me drink from this bowl

LYSISTRATA IF NOT, LET MY OWN BOWL BE FILLED WITH WATER.

KALONIKE If not, let my own bowl be filled with water.

LYSISTRATA You have all sworn?

MYRRHINE We have.

Volume I, *Humanities*, at 72-73. [\*\*17]

n8 An example of what may be reasonably considered to be vulgarity may be found in *The Miller's Tale*, where the parish clerk Absalon attempts to kiss the landlord's wife Alison at her bedroom window:

The night was dark as pitch, black as coal, and out the window she thrust her hole. And Absolon, as Fortune had in store for him, with his mouth kissed her naked ass with relish before he knew what was happening. He started back and thought something was wrong, for he knew well that women do not have beards and he had felt something rough and long-haired.

Volume I, *Humanities*, at 212. In another passage, Alison's lover, Nicholas, similarly encounters Absalon:

Nicholas had gotten up to piss and thought that he could improve on the joke. He would have Absalon kiss his ass before he left. He quickly raised the window up and slyly thrust his ass far out, buttocks and all, even to the haunches.

Then Absalon said, "Speak, sweet bird. I don't know where you are."

Nicholas at once let fly a fart as great as a thunder clap, that almost blinded Absalon. But he was ready with his hot iron and smote Nicholas in the middle of his ass.

*Id.* at 213.

-----End Footnotes-----

The Court finds that the [\*\*18] School Board's removal of Volume I of *Humanities* was [\*1554] reasonably related to its pedagogical goal of keeping vulgarity and certain matters of sexuality out of its curriculum. Although the School Board could reasonably have, as the plaintiffs suggest, provided warnings to students regarding the potentially objectionable contents of *Lysistrata* and *The Miller's Tale*, the School Board's chosen alternative was not an unreasonable one. Given the stated beliefs of the School Board regarding sexuality and vulgarity, the Board reasonably decided that including Volume I in its curriculum would be inconsistent with its duty to limit students' exposure to "material that may be inappropriate for their level of maturity." *Kuhlmeier*, 56 U.S.L.W. at 4082. Given these beliefs, the additional step of making Volume I available in the school library represented a fair compromise with those students holding a particular interest in Volume I.

### III. Conclusion

The parties do not dispute that the curriculum decision of the School Board in this case was based on the Board's own standards regarding sexuality and vulgarity. Although the Court wishes that the Board had imposed its standards in [\*\*19] a manner less restrictive of speech, the Court recognizes that the Board retains broad discretion under our constitutional system in dealing with such potentially sensitive topics. As stated by the Supreme Court in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 56 U.S.L.W. 4079, 98 L. Ed. 2d 592, 108 S. Ct. 562 (U.S. 1988), "the education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges." *Id.* at 4082. The Court will therefore grant the defendants' Motion for Summary Judgment.

**BOARD OF EDUCATION, ISLAND TREES UNION FREE SCHOOL DISTRICT NO. 26, ET AL. v. PICO, BY HIS  
NEXT FRIEND PICO, ET AL.**

No. 80-2043

SUPREME COURT OF THE UNITED STATES

457 U.S. 853; 102 S. Ct. 2799; 73 L. Ed. 2d 435; 1982 U.S. LEXIS 8; 8 Media L. Rep. 1721

March 2, 1982, Argued; June 25, 1982, Decided

**SUMMARY:** A local school board, characterizing a number of books as "anti-American, anti-Christian, anti-Semitic, and just plain filthy," directed their removal from the libraries of a district high school and junior high school. The board then appointed a committee of parents and members of the school staff to make recommendations about the books, but it substantially rejected the committee's recommendations in deciding that nine books should be removed from elementary and secondary school libraries and from use in the curriculum. Several students attending the junior high school and high school brought an action under 42 USCS 1983 in the United States District Court for the Eastern District of New York, alleging that the board's actions--taken because of offense to its social, political, and moral tastes--denied them their rights under the First Amendment and seeking declaratory and injunctive relief. The District Court granted summary judgment in favor of the board, finding that the board acted not on religious principles, but on its conservative education philosophy, in ordering the removal of the books and that, although the removal was content-based, there was no constitutional violation of the requisite magnitude (474 F Supp 387). The United States Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the action for a trial on the students' allegations (638 F2d 404).

On certiorari, the United States Supreme Court affirmed. **Although unable to agree on an opinion, five members of the court agreed that there was a material issue of fact that precluded summary judgment in favor of the school board.**

[Brennan, J., announced the judgment of the court](#) and, in an opinion joined by Marshall and Stevens, JJ., and joined in part (all except for statement 1 below) by Blackmun, J., expressed the view that (1) local school boards have broad discretion in the management of school affairs, but this discretion must be exercised in a manner that comports with the transcendent imperatives of the First Amendment, (2) the First Amendment rights of students may be directly and sharply implicated by the removal of books from the shelves of a school library, (3) local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books, and (4) the evidentiary materials that were before the District Court, when construed most favorably to the students, raised a genuine issue of material fact as to whether the school board exceeded constitutional limitations in exercising its discretion to remove the books from the school libraries, such issue foreclosing summary judgment in favor of the school board.

[Blackmun, J., concurring in part and concurring in the judgment](#), expressed the view that (1) school officials may not remove books for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials' disapproval of the ideas involved, and (2) this is a narrow principle, since school officials must be able to choose one book over another, without outside interference, when the first book is deemed more relevant to the curriculum, or better written, or when one of a host of other politically neutral reasons is present.

[White, J., concurring in the judgment](#), expressed the view that (1) the material issue of fact precluding summary judgment for the school board concerned the reasons underlying the school board's removal of the books, and (2) there was no necessity at this point to go further and issue a dissertation on the extent to which the First Amendment limits the discretion of a school board to remove books from a school library.

[Burger, Ch. J., joined by Powell, Rehnquist, and O'Connor, JJ., dissented](#), expressing the view that (1) in an attempt to deal with a problem in an area traditionally left to the states, a plurality of the court wrongly took the position that a school board's decision concerning what books are to be in the school library is subject to federal court review, (2) if the plurality's view were to become the law, the court would come perilously close to becoming a "super censor" of school board library decisions, and (3) the Constitution does not dictate that judges, rather than parents, teachers, and local school boards, must determine how the standards of morality and vulgarity are to be treated in the classroom.

[Powell, J., dissented](#), expressing the view that the states and locally elected school boards should have the responsibility for determining the educational policy of the public schools, school boards being uniquely local and democratic institutions.

[Rehnquist, J., joined by Burger, Ch. J., and Powell, J., dissented](#), expressing the view that (1) actions by the government as educator do not raise the same First Amendment concerns as actions by the government as sovereign, (2) a right to receive information, in the junior high school and high school setting, is wholly unsupported by the court's past decisions and is inconsistent with the necessarily selective process of elementary and secondary education, and (3) the statement in the plurality opinion that the Constitution does not permit the official suppression of ideas is not a useful analytical tool in

solving difficult First Amendment problems.

[O'Connor, J., dissented](#), expressing the view that (1) a school board can decide which books to discontinue or remove from the school library so long as it does not also interfere with the right of students to read the material and to discuss it, and (2) it is not the function of the courts to make the decisions that have been properly relegated to the elected members of school boards.

**note:** the summaries above were prepared by LexisNexis. The opinions by the Justices themselves (as abridged by me for this class) appear below this table, which displays the alignment of the Justices on

1. the official judgment (supported by five Justices, and announced in Brennan's opinion), which sustained reversal of a summary judgment against the students, and would have blocked them from having a trial on their allegations that the School Board violated their First Amendment rights by its action in removing books from the school library; and
2. the substantive position that students have a "right to receive information and ideas" protected by the First Amendment. This substantive position was expounded in the opinion by Brennan in which he also announced the Court's ruling against summary judgment; so his whole opinion, including what he has to say about the students' rights, has been erroneously regarded as an opinion "for the Court." As you see below, however, although five Justices agreed to rule against summary judgment, only three agreed that students have the "right to receive information and ideas" expounded in Brennan's opinion.

	<b>Summary Judgment:</b> (no need for a fact-finding trial, since even if the students could prove all the facts that they allege, these facts would not show any violation of any rights they have under the First Amendment)	<b>Students have First Amendment Right to Receive Information and Ideas</b>
<b>Burger</b>	<b>yes</b>	<b>no</b>
<b>Rehnquist</b>	<b>yes</b>	<b>no</b>
<b>Powell</b>	<b>yes</b>	<b>no</b>
<b>O'Connor</b>	<b>yes</b>	<b>no</b>
<b>White</b>	<b>no</b>	<b>better not to decide now</b>
<b>Blackmun</b>	<b>no</b>	<b>no</b> , but <i>suppression</i> of ideas is banned
<b>Brennan</b>	<b>no</b>	<b>yes</b>
<b>Stevens</b>	<b>no</b>	<b>yes</b>
<b>Marshall</b>	<b>no</b>	<b>yes</b>

**OPINION:** [\*855] [\*\*\*439] [\*\*2802] **JUSTICE BRENNAN announced the judgment of the Court and delivered an opinion**, in which JUSTICE MARSHALL and JUSTICE STEVENS joined, and in which JUSTICE BLACKMUN joined except for Part II-A-(1).

[\*\*HR1A] [1A]

The principal question presented is whether the First Amendment n1 imposes limitations upon the exercise by a local [\*856] school board of its discretion to remove library books [\*\*\*440] from high school and junior high school libraries.

//////////I

In September 1975, petitioners [school board members] Ahrens, Martin, and Hughes attended a conference sponsored by Parents of New York United (PONYU), a politically conservative organization of parents concerned about education legislation in the State of New York. At the conference these petitioners obtained lists of books described by Ahrens as "objectionable," App. 22, and by Martin as "improper fare for school students," *id.*, at 101. n2 It was later determined that the [\*\*2803] High School library contained nine of the listed books, and that another listed book was in the Junior High School library. n3 In [\*857] February 1976, at a meeting with the Superintendent of Schools and the Principals of the High School and Junior High School, the Board gave an "unofficial direction" that the listed books be removed from the library shelves and delivered to the Board's offices, so that Board members could read them. n4 When this directive was carried out, it became publicized, and the Board issued a press release justifying its action. It characterized the removed books as "anti-American, anti-Christian, anti-[Semitic], and just plain filthy," and concluded that [\*\*\*441] "[it] is our duty, our moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers." 474



F.Supp. 387, 390 (EDNY 1979).

-----Footnotes-----

n2 The District Court noted, however, that petitioners "concede that the books are not obscene." 474 F.Supp. 387, 392 (EDNY 1979).

n3 The nine books in the High School library were: Slaughter House Five, by Kurt Vonnegut, Jr.; The Naked Ape, by Desmond Morris; Down These Mean Streets, by Piri Thomas; Best Short Stories of Negro Writers, edited by Langston Hughes; Go Ask Alice, of anonymous authorship; Laughing Boy, by Oliver LaFarge; Black Boy, by Richard Wright; A Hero Ain't Nothin' But A Sandwich, by Alice Childress; and Soul On Ice, by Eldridge Cleaver. The book in the Junior High School library was A Reader for Writers, edited by Jerome Archer. Still another listed book, The Fixer, by Bernard Malamud, was found to be included in the curriculum of a 12th-grade literature course. 474 F.Supp., at 389, and nn. 2-4.

n4 The Superintendent of Schools objected to the Board's informal directive, noting:

"[We] already have a policy . . . designed expressly to handle such problems. It calls for the Superintendent, upon receiving an objection to a book or books, to appoint a committee to study them and make recommendations. I feel it is a good policy -- and it is Board policy -- and that it should be followed in this instance. Furthermore, I think it can be followed quietly and in such a way as to reduce, perhaps avoid, the public furor which has always attended such issues in the past." App. 44.

The Board responded to the Superintendent's objection by repeating its directive "that *all copies* of the library books in question be removed from the libraries to the Board's office." *Id.*, at 47 (emphasis in original).

-----End Footnotes-----

A short time later, the Board appointed a "Book Review Committee," consisting of four Island Trees parents and four members of the Island Trees schools staff, to read the listed books and to recommend to the Board whether the books should be retained, taking into account the books' "educational suitability," "good taste," "relevance," and "appropriateness to age and grade level." In July, the Committee [\*858] made its final report to the Board, recommending that five of the listed books be retained n5 and that two others be removed from the school libraries. n6 As for the remaining four books, the Committee could not agree on two, n7 took no position on one, n8 and recommended that the last book be made available to students only with parental approval. n9 The Board substantially rejected the Committee's report later that month, deciding that only one book should be returned to the High School library without restriction, n10 that another should be made available subject to parental approval, n11 but that the remaining nine books should "be removed from elementary and secondary libraries and [from] use in the curriculum." *Id.*, at 391. n12 The Board gave no reasons for rejecting the recommendations of the Committee that it had appointed.

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[\*\*2804] Respondents reacted to the Board's decision by bringing the present action under 42 U. S. C. § 1983 in the United States District Court for the Eastern District of New York. They alleged that petitioners had

"ordered the removal of the books from school libraries and proscribed their use in the curriculum because particular passages in the books offended their social, political [\*859] and moral tastes and not because the books, taken as a whole, were lacking in educational value." App. 4.

Respondents claimed that the Board's actions denied them their rights under the First Amendment. They asked the court for a declaration that the Board's actions were unconstitutional, and for preliminary and permanent injunctive relief ordering the Board to return the nine books to the school libraries and to refrain from interfering with the use of those books in the schools' curricula. *Id.*, at 5-6.

The District Court granted summary [\*\*\*442] judgment in favor of petitioners. 474 F.Supp. 387 (1979). In the court's view, "the parties substantially [agreed] about the motivation behind the board's actions," *id.*, at 391 -- namely, that

"the board acted not on religious principles but on its conservative educational philosophy, and on its belief that the nine books removed from the school library and curriculum were irrelevant, vulgar, immoral, and in bad taste, making them educationally unsuitable for the district's junior and senior high school students." *Id.*, at 392.

With this factual premise as its background, the court rejected respondents' contention that their First Amendment rights had been infringed by the Board's actions. Noting that statutes, history, and precedent had vested local school boards with a broad discretion to formulate educational policy, n13 the court concluded that it should not intervene in "the daily operations of school systems" unless "basic constitutional values" were "sharply [implicated]," n14 and determined [\*860] that the

conditions for such intervention did not exist in the present case. Acknowledging that the "removal [of the books] . . . clearly was content-based," the court nevertheless found no constitutional violation of the requisite magnitude:

"The board has restricted access only to certain books which the board believed to be, in essence, vulgar. While removal of such books from a school library may . . . reflect a misguided educational philosophy, it does not constitute a sharp and direct infringement of any first amendment right." *Id.*, at 397.

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A three-judge panel of the United States Court of Appeals for the Second Circuit reversed the judgment of the District Court, and remanded the action for a trial on respondents' allegations. 638 F.2d 404 (1980). Each judge on the panel filed a separate opinion. Delivering the judgment of the court, Judge Sifton treated the case as involving "an unusual and irregular intervention in the school libraries' operations by persons not routinely concerned with such matters," and concluded that petitioners were obliged to demonstrate a reasonable basis for interfering with respondents' First Amendment rights. *Id.*, at 414-415. He then determined that, at least at the summary judgment stage, petitioners had not offered sufficient justification for their action, n15 and concluded that respondents "should have . . . been offered [\*\*2805] an opportunity to persuade a finder of fact that the ostensible justifications for [petitioners'] actions . . . were simply pretexts for the suppression of free speech." *Id.*, at [\*\*\*443] 417. n16 Judge Newman [\*861] concurred in the result. *Id.*, at 432-438. He viewed the case as turning on the contested factual issue of whether petitioners' removal decision was motivated by a justifiable desire to remove books containing vulgarities and sexual explicitness, or rather by an impermissible desire to suppress ideas. *Id.*, at 436-437. n17 We granted certiorari, 454 U.S. 891 (1981).

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n16 Judge Sifton stated that it could be inferred from the record that petitioners' "political views and personal taste [were] being asserted not in the interests of the children's well-being, but rather for the purpose of establishing those views as the correct and orthodox ones for all purposes in the particular community." *Id.*, at 417.

n17 Judge Mansfield dissented, *id.*, at 419-432, based upon a distinctly different reading of the record developed in the District Court. According to Judge Mansfield, "the undisputed evidence of the motivation for the Board's action was the perfectly permissible ground that the books were indecent, in bad taste, and unsuitable for educational purposes." *Id.*, at 430. He also asserted that in reaching its decision "the Board [had] acted carefully, conscientiously and responsibly after according due process to all parties concerned." *Id.*, at 422. Judge Mansfield concluded that "the First Amendment entitles students to reasonable freedom of expression but not to freedom from what some may consider to be excessively moralistic or conservative selection by school authorities of library books to be used as educational tools." *Id.*, at 432.

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II

We emphasize at the outset the limited nature of the substantive question presented by the case before us. Our precedents have long recognized certain constitutional limits upon the power of the State to control even the curriculum and classroom. For example, *Meyer v. Nebraska*, 262 U.S. 390 (1923), struck down a state law that forbade the teaching of modern foreign languages in public and private schools, and *Epperson v. Arkansas*, 393 U.S. 97 (1968), declared unconstitutional a state law that prohibited the teaching of the Darwinian theory of evolution in any state-supported school. But the current action does not require us to re-enter this difficult terrain, which *Meyer* and *Epperson* traversed without apparent misgiving. For as this case is presented to us, it does not involve textbooks, or indeed any books that Island [\*862] Trees students would be required to read. n18 Respondents do not seek in this Court to impose limitations upon their school Board's discretion to prescribe the curricula of the Island Trees schools. On the contrary, the only books at issue in this case are *library* books, books that by their nature are optional rather than required reading. [\*\*\*444] Our adjudication of the present case thus does not intrude into the classroom, or into the compulsory courses taught there. Furthermore, even as to library books, the action before us does not involve the *acquisition* of books. Respondents have not sought to compel their school Board to add to the school library shelves any books that students desire to read. Rather, the only action challenged in [\*\*2806] this case is the *removal* from school libraries of books originally placed there by the school authorities, or without objection from them.

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n18 Four of respondents' five causes of action complained of petitioners' "resolutions ordering the removal of certain books from the school libraries of the District and prohibiting the use of those books in the curriculum." App. 5. The District Court concluded that "respect for . . . the school board's substantial control over educational content . . . [precludes] any finding of a first amendment violation arising out of removal of any of the books from use in the curriculum." 474 F.Supp., at 397. This holding is not at issue here. Respondents' fifth cause of action complained that petitioners' "resolutions prohibiting the use of certain books in the curriculum of schools in the District" had "imposed upon teachers in the District arbitrary and unreasonable restrictions upon their ability to function as teachers in violation of principles of academic freedom." App. 6.

[goes on to explain why S Ct is looking at library issues only ... not use of books in the "curriculum"]

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In sum, the issue before us in this case is a narrow one, both substantively and procedurally. It may best be restated as two distinct questions. First, does the First Amendment impose *any* limitations upon the discretion of petitioners to remove library books from the Island Trees High School and Junior High School? Second, if so, do the affidavits and other evidentiary materials before the District Court, construed most favorably to respondents, raise a genuine issue of fact whether petitioners might have exceeded those limitations? \\\\\\\

A

(1)

The Court has long recognized that local school boards have broad discretion in the management of school affairs. See, e. g., *Meyer v. Nebraska*, *supra*, at 402; *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925). *Epperson v. Arkansas*, [\*864] *supra*, at 104, reaffirmed that, by and large, "public education in our Nation is committed to the control of state and local authorities," and that federal courts should not ordinarily "intervene in the resolution of conflicts which arise in the daily operation of school systems." *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 507 [\*\*\*445] (1969), noted that we have "repeatedly emphasized . . . the comprehensive authority of the States and of school officials . . . to prescribe and control conduct in the schools." We have also acknowledged that public schools are vitally important "in the preparation of individuals for participation as citizens," and as vehicles for "inculcating fundamental values necessary to the maintenance of a democratic political system." *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979). We are therefore in full agreement with petitioners that local school boards must be permitted "to establish and apply their curriculum in such a way as to transmit community values," and that "there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political." Brief for Petitioners 10. n19

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[\*\*\*HR2A] [2A]

At the same time, however, we have necessarily recognized that the discretion of the States and local school boards in matters of education must be exercised in a [\*\*2807] manner that comports with the transcendent imperatives of the First Amendment. In *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), we held that under the First Amendment a student in a public school could not be compelled to salute the flag. We reasoned:

"Boards of Education . . . have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional [\*865] freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Id.*, at 637.

Later cases have consistently followed this rationale. Thus *Epperson v. Arkansas* invalidated a State's anti-evolution statute as violative of the Establishment Clause, and reaffirmed the duty of federal courts "to apply the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry." 393 U.S., at 104. And *Tinker v. Des Moines School Dist.*, *supra*, held that a local school board had infringed the free speech rights of high school and junior high school students by suspending them from school for wearing black armbands in class as a protest against the Government's policy in Vietnam; we stated there that the "comprehensive authority . . . of school officials" must

be exercised "consistent with fundamental constitutional safeguards." 393 U.S., at 507. In sum, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *id.*, at 506, and therefore local school boards must discharge their "important, delicate, and highly discretionary functions" within the limits and constraints of the First Amendment.

The nature of students' First [\*\*\*446] Amendment rights in the context of this case requires further examination. *West Virginia Board of Education v. Barnette*, *supra*, is instructive. There the Court held that students' liberty of conscience could not be infringed in the name of "national unity" or "patriotism." 319 U.S., at 640-641. We explained that

"the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." *Id.*, at 642. [\*866]

Similarly, *Tinker v. Des Moines School Dist.*, *supra*, held that students' rights to freedom of expression of their political views could not be abridged by reliance upon an "undifferentiated fear or apprehension of disturbance" arising from such expression:

"Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, *Terminiello v. Chicago*, 337 U.S. 1 (1949); and our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this . . . often disputations society." 393 U.S., at 508-509.

In short, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to . . . students." *Id.*, at 506.

Of course, courts should not "intervene in the resolution of conflicts which arise in the daily operation of school systems" unless "basic constitutional values" [\*\*2808] are "directly and sharply [implicated]" in those conflicts. *Epperson v. Arkansas*, 393 U.S., at 104. But we think that the First Amendment rights of students may be directly and sharply implicated by the removal of books from the shelves of a school library. Our precedents have focused "not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978). And we have recognized that "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." *Grissold v. Connecticut*, 381 U.S. 479, 482 (1965). In keeping with this principle, [\*867] we have held that in a variety of contexts "the Constitution protects the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); see *Kleindienst v. Mandel*, 408 U.S. 753, 762-763 (1972) (citing cases). This [\*\*\*447] right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the sender's First Amendment right to send them: "The right of freedom of speech and press . . . embraces the right to distribute literature, and necessarily protects the right to receive it." *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (citation omitted). "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (BRENNAN, J., concurring).

More importantly, the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom. Madison admonished us:

"A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." 9 Writings of James Madison 103 (G. Hunt ed. 1910). n20

[\*868] As we recognized in *Tinker*, students too are beneficiaries of this principle:

"In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. . . . [School] officials cannot suppress 'expressions of feeling with which they do not wish to contend.'" 393 U.S., at 511 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (CA5 1966)).

In sum, just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society [\*\*2809] in which they will soon be adult members. Of course all First Amendment rights accorded to students must be construed "in light of the special characteristics of the school environment." *Tinker v. Des Moines School Dist.*, 393 U.S., at 506. But the special characteristics of the school library make that environment especially appropriate [\*\*\*448] for the recognition of the First Amendment rights of students.

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A school library, no less than any other public library, is "a place dedicated to quiet, to knowledge, and to beauty." *Brown v. Louisiana*, 383 U.S. 131, 142 (1966) (opinion of Fortas, J.). *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), observed that "students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding." n21 The school library is the principal locus [869] of such freedom. As one District Court has well put it, in the school library

"a student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum. . . . [The] student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom." *Right to Read Defense Committee v. School Committee*, 454 F.Supp. 703, 715 (Mass. 1978).

Petitioners emphasize the inculcative function of secondary education, and argue that they must be allowed unfettered discretion to "transmit community values" through the Island Trees schools. But that sweeping claim overlooks the unique role of the school library. It appears from the record that use of the Island Trees school libraries is completely voluntary on the part of students. Their selection of books from these libraries is entirely a matter of free choice; the libraries afford them an opportunity at self-education and individual enrichment that is wholly optional. Petitioners might well defend their claim of absolute discretion in matters of curriculum by reliance upon their duty to inculcate community values. But we think that petitioners' reliance upon that duty is misplaced where, as here, they attempt to extend their claim of absolute discretion beyond the compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there holds sway.

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(2)

In rejecting petitioners' claim of absolute discretion to remove books from their school libraries, we do not deny that local school boards have a substantial legitimate role to play in the determination of school library content. We thus must turn to the question of the extent to which the First Amendment places limitations upon the discretion of petitioners to remove books from their libraries. In this inquiry we [870] enjoy the guidance of several precedents. *West Virginia Board of Education v. Barnette* stated:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion . . . . If there are any circumstances which permit an exception, they do not now occur to us." 319 U.S., at 642.

This doctrine has been reaffirmed in later cases involving education. For example, *Keyishian v. Board of Regents*, *supra*, at [\*\*\*449] 603, noted that "the First Amendment . . . does not tolerate laws that cast a pall of orthodoxy over the classroom;" see also *Epperson v. Arkansas*, 393 U.S., at 104-105. And *Mt. Healthy City Board of Ed. v. Doyle*, 429 U.S. 274 (1977), recognized First Amendment limitations upon the discretion of a local school board to refuse to rehire a nontenured teacher. The school board in *Mt. Healthy* had declined to renew respondent Doyle's employment contract, in part because he had exercised his First Amendment [2810] rights. Although Doyle did not have tenure, and thus "could have been discharged for no reason whatever," *Mt. Healthy* held that he could "nonetheless establish a claim to reinstatement if the decision not to rehire him was made by reason of his exercise of constitutionally protected First Amendment freedoms." *Id.*, at 283-284. We held further that once Doyle had shown "that his conduct was constitutionally protected, and that this conduct was a 'substantial factor' . . . in the Board's decision not to rehire him," the school board was obliged to show "by a preponderance of the evidence that it would have reached the same decision as to respondent's reemployment even in the absence of the protected conduct." *Id.*, at 287.

With respect to the present case, the message of these precedents is clear. Petitioners rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a



narrowly partisan or political manner. If a Democratic school board, motivated by party affiliation, ordered the removal of all books [\*871] written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students denied access to those books. The same conclusion would surely apply if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration. Our Constitution does not permit the official suppression of ideas. Thus whether petitioners' removal of books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners' actions. If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, n22 then petitioners have exercised their discretion in violation of the Constitution. To permit such intentions to control official actions would be to encourage the precise sort of officially prescribed orthodoxy unequivocally condemned in *Barnette*. On the other hand, respondents implicitly concede that an unconstitutional motivation would *not* be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar. Tr. of Oral Arg. 36. And again, respondents concede that if it were demonstrated that the removal decision was based [\*\*\*450] solely upon the "educational suitability" of the books in question, then their removal would be "perfectly permissible." *Id.*, at 53. In other words, in respondents' view such motivations, if decisive of petitioners' actions, would not carry the danger of an official suppression of ideas, and thus would not violate respondents' First Amendment rights.

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As noted earlier, nothing in our decision today affects in any way the discretion of a local school board to choose books to *add* to the libraries of their schools. Because we are concerned in this case with the suppression of ideas, our holding [\*872] today affects only the discretion to *remove* books. In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia Board of Education v. Barnette*, 319 U.S., at 642. Such purposes stand inescapably condemned by our precedents.

B

[\*\*\*HR1B] [1B]

We now turn to the remaining question presented by this case: Do the evidentiary materials that were before the District Court, when construed most favorably to respondents, raise a genuine issue of material fact whether petitioners exceeded constitutional limitations in exercising [\*2811] their discretion to remove the books from the school libraries? We conclude that the materials do raise such a question, which forecloses summary judgment in favor of petitioners.

Before the District Court, respondents claimed that petitioners' decision to remove the books "was based on [their] personal values, morals and tastes." App. 139. Respondents also claimed that petitioners objected to the books in part because excerpts from them were "anti-American." *Id.*, at 140. The accuracy of these claims was partially conceded by petitioners, n23 and petitioners' own affidavits lent further support to respondents' claims. n24 In addition, the [\*873] record developed in the District Court shows that when petitioners offered their first public explanation for the removal of the books, they relied in part on the assertion that the removed books were "anti-American," and "offensive to . . . Americans in general." 474 F.Supp., at 390. n25 [\*\*\*451] Furthermore, while the Book Review Committee appointed by petitioners was instructed to make its recommendations based upon criteria that appear on their face to be permissible -- the books' "educational suitability," "good taste," "relevance," and "appropriateness to age and grade level," App. 67 -- the Committee's recommendations that five of the books be retained and that only two be removed were essentially rejected by petitioners, without any statement of reasons for doing so. Finally, while petitioners originally defended their removal decision with the explanation that "these books contain obscenities, blasphemies, brutality, and perversion beyond description," 474 F.Supp., at 390, one of the books, *A Reader for Writers*, was removed even though it contained no such language. 638 F.2d, at 428, n. 6 (Mansfield, J., dissenting).

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n23 Petitioners acknowledged that their "evaluation of the suitability of the books was based on [their] personal values, morals, tastes and concepts of educational suitability." App. 142. But they did not accept, and thus apparently denied, respondents' assertion that some excerpts were objected to as "anti-American." *Ibid.*

n24 For example, petitioner Ahrens stated:

"I am basically a conservative in my general philosophy and feel that the community I represent as a school board member shares that philosophy. . . . I feel that it is my duty to apply my conservative principles to the decision making process in which I am involved as a board member and I have done so with regard to . . . curriculum formation and content and other

educational matters." *Id.*, at 21.

"We are representing the community which first elected us and re-elected us and our actions have reflected its intrinsic values and desires." *Id.*, at 27.

Petitioners Fasulo, Hughes, Melchers, Michaels, and Nessim made a similar statement that they had "represented the basic values of the community in [their] actions." *Id.*, at 120.

**n25** When asked to give an example of "anti-Americanism" in the removed books, petitioners Ahrens and Martin both adverted to *A Hero Ain't Nothin' But A Sandwich*, which notes at one point that George Washington was a slaveholder. See A. Childress, *A Hero Ain't Nothin' But A Sandwich* 43 (1973); Deposition of Petitioner Ahrens 89; Deposition of Petitioner Martin 20-22. Petitioner Martin stated: "I believe it is anti-American to present one of the nation's heroes, the first President, . . . in such a negative and obviously one-sided life. That is one example of what I would consider anti-American." Deposition of Petitioner Martin 22.

-----End Footnotes-----

[\*874] Standing alone, this evidence respecting the substantive motivations behind petitioners' removal decision would not be decisive. This would be a very different case if the record demonstrated that petitioners had employed established, regular, and facially unbiased procedures for the review of controversial materials. But the actual record in the case before us suggests the exact opposite. Petitioners' removal procedures were vigorously challenged below by respondents, and the evidence on this issue sheds further light on the issue of petitioners' motivations. **n26** Respondents alleged [\*2812] that in making their removal decision petitioners ignored "the advice of literary experts," the views of "librarians and teachers within the Island Trees School system," the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school students. App. 128-129. Respondents also claimed that petitioners' decision was based solely on the fact that the books were named on the PONYU list received by petitioners Ahrens, Martin, and Hughes, and that petitioners "did not undertake an independent review of other books in the [school] libraries." *Id.*, at 129-130. Evidence before the District Court lends support to these claims. The record shows that immediately after petitioners first ordered the books removed from the library [\*\*\*452] shelves, the Superintendent of Schools reminded them that "we already have a policy . . . designed expressly [\*875] to handle such problems," and recommended that the removal decision be approached through this established channel. See n. 4, *supra*. But the Board disregarded the Superintendent's advice, and instead resorted to the extraordinary procedure of appointing a Book Review Committee -- the advice of which was later rejected without explanation. In sum, respondents' allegations and some of the evidentiary materials presented below do not rule out the possibility that petitioners' removal procedures were highly irregular and ad hoc -- the antithesis of those procedures that might tend to allay suspicions regarding petitioners' motivations.

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Construing these claims, affidavit statements, and other evidentiary materials in a manner favorable to respondents, we cannot conclude that petitioners were "entitled to a judgment as a matter of law." **The evidence plainly does not foreclose the possibility that petitioners' decision to remove the books rested decisively upon disagreement with constitutionally protected ideas in those books, or upon a desire on petitioners' part to impose upon the students of the Island Trees High School and Junior High School a political orthodoxy to which petitioners and their constituents adhered.** Of course, some of the evidence before the District Court might lead a finder of fact to accept petitioners' claim that their removal decision was based upon constitutionally valid concerns. But that evidence at most creates a genuine issue of material fact on the critical question of the credibility of petitioners' justifications for their decision: On that issue, it simply cannot be said that there is no genuine issue as to any material fact.

The mandate shall issue forthwith.

*Affirmed.*

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**CONCUR: JUSTICE BLACKMUN, concurring in part and concurring in the judgment.**

[\*\*\*HR1C] [1C]

While I agree with much in today's plurality opinion, and while I accept the standard laid down by the plurality to [\*876] guide proceedings on remand, I write separately because I have a somewhat different perspective on the nature of the First

Amendment right involved.

I

To my mind, this case presents a particularly complex problem because it involves two competing principles of constitutional stature. On the one hand, as the dissenting opinions demonstrate, and as we all can agree, the Court has acknowledged the importance of the public schools "in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests." *Ambach v. Norwick*, 441 U.S. 68, 76 (1979). See, also, *ante*, at 863-864 (plurality opinion). Because of the essential socializing function of [\*\*2813] schools, local education officials may attempt "to promote civic virtues," *Ambach v. Norwick*, 441 U.S., at 80, and to "[awaken] the child to cultural values." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). Indeed, the Constitution presupposes the existence [\*\*\*453] of an informed citizenry prepared to participate in governmental affairs, and these democratic principles obviously are constitutionally incorporated into the structure of our government. It therefore seems entirely appropriate that the State use "public schools [to] . . . [inculcate] fundamental values necessary to the maintenance of a democratic political system." *Ambach v. Norwick*, 441 U.S., at 77.

On the other hand, as the plurality demonstrates, it is beyond dispute that schools and school boards must operate within the confines of the First Amendment. In a variety of academic settings the Court therefore has acknowledged the force of the principle that schools, like other enterprises operated by the State, may not be run in such a manner as to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). While none of these cases define the limits of a school board's authority [\*\*877] to choose a curriculum and academic materials, they are based on the general proposition that "state-operated schools may not be enclaves of totalitarianism. . . . In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 511 (1969).

The Court in *Tinker* thus rejected the view that "a State might so conduct its schools as to 'foster a homogeneous people.'" *Id.*, at 511, quoting *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923). Similarly, *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) -- a case that involved the State's attempt to remove "subversives" from academic positions at its universities, but that addressed itself more broadly to public education in general -- held that "[the] classroom is peculiarly the 'marketplace of ideas'"; the First Amendment therefore "does not tolerate laws that cast a pall of orthodoxy over the classroom." *Id.*, at 603. And *Barnette* is most clearly applicable here: its holding was based squarely on the view that "[free] public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction." 319 U.S., at 637. The Court therefore made it clear that imposition of "ideological discipline" was not a proper undertaking for school authorities. *Ibid.*

In combination with more generally applicable First Amendment rules, most particularly the central proscription of content-based regulations of speech, see *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972), the cases outlined above yield a general principle: the State may not suppress exposure to ideas -- for the sole purpose of suppressing exposure to those ideas -- absent sufficiently compelling reasons. Because the school board must perform all its functions "within the limits of the Bill of Rights," *Barnette*, 319 U.S., at 637, this principle necessarily applies in at [\*\*\*454] least a limited way to public education. Surely this is true in an extreme [\*\*878] case: as the plurality notes, it is difficult to see how a school board, consistent with the First Amendment, could refuse for political reasons to buy books written by Democrats or by Negroes, or books that are "anti-American" in the broadest sense of that term. Indeed, JUSTICE REHNQUIST appears "cheerfully [to] concede" this point. *Post*, at 907 (dissenting opinion).

In my view, then, the principle involved here is both narrower and more basic than [\*\*2814] the "right to receive information" identified by the plurality. I do not suggest that the State has any affirmative obligation to provide students with information or ideas, something that may well be associated with a "right to receive." See *post*, at 887 (BURGER, C. J., dissenting); *post*, at 915-918 (REHNQUIST, J., dissenting). And I do not believe, as the plurality suggests, that the right at issue here is somehow associated with the peculiar nature of the school library, see *ante*, at 868-869; if schools may be used to inculcate ideas, surely libraries may play a role in that process. n1 Instead, I suggest that certain forms of state discrimination [\*\*879] between ideas are improper. In particular, our precedents command the conclusion that the State may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons. n2

-----Footnotes-----



n1 As a practical matter, however, it is difficult to see the First Amendment right that I believe is at work here playing a role in a school's choice of curriculum. The school's finite resources -- as well as the limited number of hours in the day -- require that education officials make sensitive choices between subjects to be offered and competing areas of academic emphasis; subjects generally are excluded simply because school officials have chosen to devote their resources to one rather than to another subject. As is explained below, a choice of this nature does not run afoul of the First Amendment. In any event, the Court has recognized that students' First Amendment rights in most cases must give way if they interfere "with the schools' work or [with] the rights of other students to be secure and to be let alone," *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 508 (1969), and such interference will rise to intolerable levels if public participation in the management of the curriculum becomes commonplace. In contrast, library books on a shelf intrude not at all on the daily operation of a school.

I also have some doubt that there is a theoretical distinction between removal of a book and failure to acquire a book. But as Judge Newman observed, there is a profound practical and evidentiary distinction between the two actions: "removal, more than failure to acquire, is likely to suggest that an impermissible political motivation may be present. There are many reasons why a book is not acquired, the most obvious being limited resources, but there are few legitimate reasons why a book, once acquired, should be removed from a library not filled to capacity." 638 F.2d 404, 436 (CA2 1980) (Newman, J., concurring in result).

n2 In effect, my view presents the obverse of the plurality's analysis: while the plurality focuses on the failure to provide information, I find crucial the State's decision to single out an idea for disapproval and then deny access to it.

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Certainly, the unique environment of the school places substantial limits on the extent to which official decisions may be restrained by First Amendment values. But that environment also makes it particularly important that *some* limits be imposed. The school is designed to, and inevitably will, inculcate ways of thought and outlooks; if educators intentionally may eliminate all diversity of thought, the school will [\*\*\*455] "strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *Barnette*, 319 U.S., at 637. As I see it, then, the question in this case is how to make the delicate accommodation between the limited constitutional restriction that I think is imposed by the First Amendment, and the necessarily broad state authority to regulate education. In starker terms, we must reconcile the schools' "inculcative" function with the First Amendment's bar on "prescriptions of orthodoxy."

## II

In my view, we strike a proper balance here by holding that school officials may not remove books for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by [\*880] the officials' disapproval of the ideas involved. It does not seem radical to suggest that state action calculated to suppress novel ideas or concepts is fundamentally antithetical to the values of the First Amendment. At a minimum, allowing a school board to engage in such conduct hardly teaches children to respect the diversity of ideas that is fundamental to the American system. In this context, then, the school board must "be able to show that its action was caused [\*2815] by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," *Tinker v. Des Moines School Dist.*, 393 U.S., at 509, and that the board had something in mind in addition to the suppression of partisan or political views it did not share.

As I view it, this is a narrow principle. School officials must be able to choose one book over another, without outside interference, when the first book is deemed more relevant to the curriculum, or better written, or when one of a host of other politically neutral reasons is present. These decisions obviously will not implicate First Amendment values. And even absent space or financial limitations, First Amendment principles would allow a school board to refuse to make a book available to students because it contains offensive language, cf. *FCC v. Pacifica Foundation*, 438 U.S. 726, 757 (1978) (POWELL, J., concurring), or because it is psychologically or intellectually inappropriate for the

age group, or even, perhaps, because the ideas it advances are "manifestly inimical to the public welfare." *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925). And, of course, school officials may choose one book over another because they believe that one subject is more important, or is more deserving of emphasis.

As is evident from this discussion, I do not share JUSTICE REHNQUIST's view that the notion of "suppression of ideas" is not a useful analytical concept. See *post*, at 918-920 (dissenting opinion). Indeed, JUSTICE REHNQUIST's discussion itself [\*881] demonstrates that "access to ideas" has been given meaningful application in a variety of contexts. See *post*, at 910-920, 914 ("[education] consists of the selective presentation and explanation of ideas"). [\*\*\*456] And I believe that tying the First Amendment right to the *purposeful* suppression of ideas makes the concept more manageable than JUSTICE REHNQUIST acknowledges. Most people would recognize that refusing to allow discussion of current events in Latin class is a policy designed to "inculcate" Latin, not to suppress ideas. Similarly, removing a learned treatise criticizing American foreign policy from an elementary school library because the students would not understand it is an action unrelated to the *purpose* of suppressing ideas. In my view, however, removing the same treatise because it is "anti-American" raises a far more difficult issue.

It is not a sufficient answer to this problem that a State operates a school in its role as "educator," rather than its role as "sovereign," see *post*, at 908-910 (REHNQUIST, J., dissenting), for the First Amendment has application to all the State's activities. While the State may act as "property owner" when it prevents certain types of expressive activity from taking place on public lands, for example, see *post*, at 908-909, few would suggest that the State may base such restrictions on the content of the speaker's message, or may take its action for the purpose of suppressing access to the ideas involved. See *Police Department of Chicago v. Mosley*, 408 U.S., at 96. And while it is not clear to me from JUSTICE REHNQUIST's discussion whether a State operates its public libraries in its "role as sovereign," surely difficult constitutional problems would arise if a State chose to exclude "anti-American" books from its public libraries -- even if those books remained available at local bookstores.

Concededly, a tension exists between the properly inculcative purposes of public education and any limitation on the school board's absolute discretion to choose academic materials. But that tension demonstrates only that the problem [\*882] here is a difficult one, not that the problem should be resolved by choosing one principle over another. As the Court has recognized, school officials must have the authority to make educationally appropriate choices in designing a curriculum: "the State may 'require teaching by instruction and study of all in our history and in the structure [\*\*2816] and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country.'" *Barnette*, 319 U.S., at 631, quoting *Minersville School District v. Gobitis*, 310 U.S. 586, 604 (1940) (Stone, J., dissenting). Thus school officials may seek to instill certain values "by persuasion and example," 319 U.S., at 640, or by choice of emphasis. That sort of positive educational action, however, is the converse of an intentional attempt to shield students from certain ideas that officials find politically distasteful. Arguing that the majority in the community rejects the ideas involved, see *post*, at 889, 891-892 (BURGER, C. J., dissenting), does not refute this principle: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and [\*\*\*457] officials . . . ." *Barnette*, 319 U.S., at 638.

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Because I believe that the plurality has derived a standard similar to the one compelled by my analysis, I join all but Part II-A (1) of the plurality opinion.

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[\*883] JUSTICE WHITE, concurring in the judgment.

[\*\*\*HR1D] [1D]

The District Court found that the books were removed from the school library because the school board believed them "to be, in essence, vulgar." 474 F.Supp. 387, 397 (EDNY 1979). Both Court of Appeals judges in the majority concluded, however, that there was a material issue of fact that precluded summary judgment sought by petitioners. The unresolved factual issue, as I understand it, is the reason or reasons underlying the school board's removal of the books. I am not inclined to disagree with the Court of Appeals on such a fact-bound issue and hence concur in the judgment of affirmance. Presumably this will result in a trial and the making of a full record and findings on the critical issues.

The plurality seems compelled to go further and issue a dissertation on the extent to which the First Amendment limits the discretion of the school board to remove books from the school library. I see no necessity for doing so at this point. When findings of fact and conclusions of law are made by the District Court, that may end the case. If, for example, the District Court concludes after a trial that the books were removed for their vulgarity, there may be no appeal. In any event, if there is an appeal, if there is dissatisfaction with the subsequent Court of Appeals' judgment, and if certiorari is sought and granted, there will be time enough to address the First Amendment issues that may then be presented.

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We should not decide constitutional questions until it is necessary to do so, or at least until there is better reason to address them than are evident here. I therefore concur in the judgment of affirmance.

**DISSENT:** [\*885] **CHIEF JUSTICE BURGER**, with whom JUSTICE POWELL, JUSTICE REHNQUIST, and JUSTICE O'CONNOR join, **dissenting**.

The First Amendment, as with other parts of the Constitution, must deal with new problems in a changing world. In an attempt to deal with a problem in an area traditionally left to the states, a plurality of the Court, in a lavish expansion going beyond any prior holding under the First Amendment, expresses its view that a school board's decision concerning what books are to be in the school library is subject to federal-court review. n1 Were this to become the law, this Court would come perilously close to becoming a "super censor" of school board library decisions. Stripped to its essentials, the issue comes down to two important [\*\*\*459] propositions: first, whether local schools are to be administered by elected school boards, or by federal judges and teenage pupils; and second, whether the values of morality, good taste, and relevance to education are valid reasons for school board decisions concerning the contents of a school library. In an attempt to place this case within the protection of the First Amendment, the plurality suggests a new "right" that, when shorn of the plurality's rhetoric, allows this Court to impose [\*886] its own views about what books must be made available to students. n2

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n1 At the outset, the plurality notes that certain school board members found the books in question "objectionable" and "improper" for junior and senior high school students. What the plurality apparently finds objectionable is that the inquiry as to the challenged books was initially stimulated by what is characterized as "a politically conservative organization of parents concerned about education," which had concluded that the books in question were "improper fare for school students." *Ante*, at 856. As noted by the District Court, however, and in the plurality opinion, *ante*, at 859, both parties substantially agreed about the motivation of the school board in removing the books:

"[The] board acted not on religious principles but on its conservative educational philosophy, and on its belief that the nine books removed from the school library and curriculum were irrelevant, vulgar, immoral, and in bad taste, making them educationally unsuitable for the district's junior and senior high school students." 474 F.Supp. 387, 392 (1979).

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[\*\*2818] I

A

[\*\*HR2B] [2B]

I agree with the fundamental proposition that "students do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" *Ante*, at 865. For example, the Court has held that a school board cannot compel a student to participate in a flag salute ceremony, *West Virginia Bd. of Education v. Barnette*, 319 U.S. 624 (1943), or prohibit a student from expressing certain views, so long as that expression does not disrupt the educational process. *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969). Here, however, no restraints of any kind are placed on the students. They are free to read the books in question, which are available at public libraries and bookstores; they are free to discuss them in the classroom or elsewhere. Despite this absence of any direct external

control on the students' ability to express themselves, the plurality suggests that there is a new First Amendment "entitlement" to have access to particular books in a school library.

The plurality cites *Meyer v. Nebraska*, 262 U.S. 390 (1923), which struck down a state law that restricted the [\*887] teaching of modern foreign languages in public and private schools, and *Epperson v. Arkansas*, 393 U.S. 97 (1968), which declared unconstitutional under the Establishment Clause a law banning the teaching of Darwinian evolution, to establish the validity of federal-court interference with the functioning of schools. The plurality finds it unnecessary "to re-enter this difficult terrain," *ante*, at 861, yet in the next breath relies on these very cases and others to establish the previously unheard of "right" of access to particular books in the [\*\*\*460] public school library. n3 The apparent underlying basis of the plurality's view seems to be that students have an enforceable "right" to receive the information and ideas that are contained in junior and senior high school library books. *Ante*, at 866. This "right" purportedly follows "ineluctably" from the sender's First Amendment right to freedom of speech and as a "necessary predicate" to the recipient's meaningful exercise of his own rights of speech, press, and political freedom. *Ante*, at 866-867. No such right, however, has previously been recognized.

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n3 Of course, it is perfectly clear that, unwise as it would be, the board could wholly dispense with the school library, so far as the First Amendment is concerned.

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It is true that where there is a willing distributor of materials, the government may not impose unreasonable obstacles to dissemination by the third party. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). And where the speaker desires to express certain ideas, the government may not impose unreasonable restraints. *Tinker v. Des Moines School Dist.*, *supra*. It does not follow, however, that a school board must affirmatively aid the speaker in his communication with the recipient. In short the plurality suggests today that if a writer has something to say, the government through its schools must be the courier. None of the cases cited by the plurality establish this broad-based proposition.

First, the plurality argues that the right to receive ideas is derived in part from the [\*\*2819] sender's First Amendment rights to [\*888] send them. Yet we have previously held that a sender's rights are not absolute. *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970). n4 Never before today has the Court indicated that the government has an *obligation* to aid a speaker or author in reaching an audience.

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Second, the plurality concludes that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom." *Ante*, at 867 (emphasis in original). However, the "right to receive information and ideas," *Stanley v. Georgia*, 394 U.S. 557, 564 (1969), cited *ante*, at 867, does not carry with it the concomitant right to have those ideas affirmatively provided at a particular place by the government. The plurality cites James Madison to emphasize the importance of having an informed citizenry. *Ibid*. We all agree with Madison, of course, that knowledge is necessary for effective government. Madison's view, however, does not establish a *right* to have particular books retained on the school library shelves if the school board decides that they are inappropriate or irrelevant to the school's mission. Indeed, if the need to have an informed citizenry creates a "right," why is the government not also required to provide ready access to a [\*\*\*461] variety of information? This same need would support a constitutional "right" of the people to have public libraries as part of a new constitutional "right" to continuing adult education.

The plurality also cites *Tinker*, *supra*, to establish that the recipient's right to free speech encompasses a right to have particular books retained on the school library shelf. *Ante*, at 868. But the cited passage of *Tinker* notes only that school officials may not *prohibit* a student from expressing his or her view on a subject unless that expression interferes with [\*889] the legitimate operations of the school. The government does not "contract the spectrum of available knowledge." *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965), cited *ante*, at 866, by choosing not to retain certain books on the school library shelf; it simply chooses not to be the conduit for that particular information. In short, even assuming the desirability of the policy expressed by the plurality, there is not a hint in the First Amendment, or in any holding of this Court, of a "right" to have the government provide continuing access to certain books.



Whatever role the government might play as a conduit of information, schools in particular ought not be made a slavish courier of the material of third parties. The plurality pays homage to the ancient verity that in the administration of the public schools "there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political." *Ante*, at 864. If, as we have held, schools may legitimately be used as vehicles for "inculcating fundamental values necessary to the maintenance of a democratic political system," *Ambach v. Norwick*, 441 U.S. 68, 77 (1979), school authorities must have broad discretion to fulfill that obligation. Presumably all activity within a primary or secondary school involves the conveyance of information and at least an implied approval of the worth of that information. How are "fundamental values" to be inculcated except by having school boards make content-based decisions about the appropriateness of retaining materials in the school library and curriculum. In order to fulfill its function, an elected school board *must* express its views on the subjects which are taught to its students. In doing so those elected officials express the views of their [\*\*2820] community; they may err, of course, and the voters may remove them. It is a startling erosion of the very idea of democratic government to have this Court arrogate to itself the power the plurality asserts today.

[\*890] The plurality concludes that under the Constitution school boards cannot choose to retain or dispense with books if their discretion is exercised in a "narrowly partisan or political manner." *Ante*, at 870. The plurality concedes that permissible factors are whether the books are "pervasively vulgar," *ante*, at 871, or educationally unsuitable. *Ibid.* "Educational suitability," however, is a standardless phrase. This conclusion will undoubtedly be drawn in many -- if not most -- instances because of the decisionmaker's content-based [\*\*\*462] judgment that the ideas contained in the book or the idea expressed from the author's method of communication are inappropriate for teenage pupils.

The plurality also tells us that a book may be removed from a school library if it is "pervasively vulgar." But why must the vulgarity be "pervasive" to be offensive? Vulgarity might be concentrated in a single poem or a single chapter or a single page, yet still be inappropriate. Or a school board might reasonably conclude that even "random" vulgarity is inappropriate for teenage school students. A school board might also reasonably conclude that the school board's retention of such books gives those volumes an implicit endorsement. Cf. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).

Further, there is no guidance whatsoever as to what constitutes "political" factors. This Court has previously recognized that public education involves an area of broad public policy and "[goes] to the heart of representative government." *Ambach v. Norwick*, *supra*, at 74. As such, virtually all educational decisions necessarily involve "political" determinations.

What the plurality views as valid reasons for removing a book at their core involve partisan judgments. Ultimately the federal courts will be the judge of whether the motivation for book removal was "valid" or "reasonable." Undoubtedly the validity of many book removals will ultimately turn on a judge's evaluation of the books. Discretion must be used, [\*891] and the appropriate body to exercise that discretion is the local elected school board, not judges. n5

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n5 Indeed, this case is illustrative of how essentially all decisions concerning the retention of school library books will become the responsibility of federal courts. As noted in n. 1, *supra*, the parties agreed that the school board in this case acted not on religious principles but "on its belief that the nine books removed from the school library and curriculum were irrelevant, vulgar, immoral, and in bad taste, making them educationally unsuitable for the district's junior and senior high school students." Despite this agreement as to motivation, the case is to be remanded for a determination of whether removal was in violation of the standard adopted by the plurality. The school board's error appears to be that it made its own determination rather than relying on experts. *Ante*, at 874-875.

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We can all agree that as a matter of educational policy students should have wide access to information and ideas. But the people elect school boards, who in turn select administrators, who select the teachers, and these are the individuals best able to determine the substance of that policy. The plurality fails to

recognize the fact that local control of education involves democracy in a microcosm. In most public schools in the United States the *parents* have a large voice in running the school. n6 Through participation in the election of school board members, the parents influence, if not control, the direction of their children's education. A school board is not [\*\*2821] a giant [\*\*\*463] bureaucracy far removed from accountability for its actions; it is truly "of the people and by the people." A school board reflects its constituency in a very real sense and thus could not long exercise unchecked discretion in its choice to acquire or remove books. If the parents disagree with the educational decisions of the school board, they can take steps to remove the board members from office. Finally, even if [\*892] parents and students cannot convince the school board that book removal is inappropriate, they have alternative sources to the same end. Books may be acquired from bookstores, public libraries, or other alternative sources unconnected with the unique environment of the local public schools. n7

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## II

No amount of "limiting" language could rein in the sweeping "right" the plurality would create. The plurality distinguishes library books from textbooks because library books "by their nature are optional rather than required reading." *Ante*, at 862. It is not clear, however, why this distinction requires *greater* scrutiny before "optional" reading materials may be removed. It would appear that required reading and textbooks have a greater likelihood of imposing a "pall of orthodoxy" over the educational process than do optional reading. *Ante*, at 870. In essence, the plurality's view transforms the availability of this "optional" reading into a "right" to have this "optional" reading maintained at the demand of teenagers.

The plurality also limits the new right by finding it applicable only to the *removal* of books once acquired. Yet if the First Amendment commands that certain books cannot be *removed*, does it not equally require that the same books be *acquired*? Why does the coincidence of timing become the basis of a constitutional holding? According to the plurality, the evil to be avoided is the "official suppression of ideas." *Ante*, at 871. It does not follow that the decision to *remove* a book is less "official suppression" than the decision not to acquire a book desired by someone. n8 Similarly, a decision to [\*893] eliminate certain material from the curriculum, history for example, would carry an equal -- probably greater -- prospect of "official suppression." Would the decision be subject to our review?

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## III

Through use of bits and pieces of prior opinions unrelated to the issue of this case, the plurality demeans our function of constitutional adjudication. Today the plurality suggests that the *Constitution* distinguishes [\*\*\*464] between school libraries and school classrooms, between *removing* unwanted books and *acquiring* books. Even more extreme, the plurality concludes that the *Constitution requires* school boards to justify to its teenage pupils the decision to remove a particular book from a school library. I categorically reject this notion that the Constitution dictates that judges, rather than parents, teachers, and local school boards, must determine how the standards of morality and vulgarity are to be treated in the classroom.

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### JUSTICE POWELL, dissenting.

The plurality opinion today rejects a basic concept of public school education in our [\*\*2822] country: that the States and locally elected school boards should have the responsibility for determining the educational policy of the public schools. After today's decision any junior high school student, by instituting a suit against a school board or teacher, may invite a judge to overrule an educational decision by the official body designated by the people to operate the schools.

[\*894] I

School boards are uniquely local and democratic institutions. Unlike the governing bodies of cities and counties, school boards have only one responsibility: the education of the youth of our country during their most formative and impressionable years. Apart from health, no subject is closer to the hearts of parents than their

children's education during those years. For these reasons, the governance of elementary and secondary education traditionally has been placed in the hands of a local board, responsible locally to the parents and citizens of school districts. Through parent-teacher associations (PTA's), and even less formal arrangements that vary with schools, parents are informed and often may influence decisions of the board. Frequently, parents know the teachers and visit classes. It is fair to say that no single agency of government at any level is closer to the people whom it serves than the typical school board.

I therefore view today's decision with genuine dismay. Whatever the final outcome of this suit and suits like it, the resolution of educational policy decisions through litigation, and the exposure of school board members to liability for such decisions, can be expected to corrode the school board's authority and effectiveness. As is evident from the generality of the plurality's "standard" for judicial review, the decision as to the educational worth of a book is a highly subjective one. Judges rarely are as competent as school authorities to make this decision; nor are judges responsive to the parents and people of the school district. n1

-----Footnotes-----End Footnotes-----

[\*895] The new constitutional right, announced by the plurality, is described as a "right to receive ideas" in a school. *Ante*, at 867. As the dissenting opinions [\*\*\*465] of THE CHIEF JUSTICE and JUSTICE REHNQUIST so powerfully demonstrate, however, this newfound right finds no support in the First Amendment precedents of this Court. And even apart from the inappropriateness of judicial oversight of educational policy, the new constitutional right is framed in terms that approach a meaningless generalization. It affords little guidance to courts, if they -- as the plurality now authorizes them -- are to oversee the inculcation of ideas. The plurality does announce the following standard: A school board's "discretion may not be exercised in a narrowly partisan or political manner." *Ante*, at 870. But this is a standardless standard that affords no more than subjective guidance to school boards, their counsel, and to courts that now will be required to decide whether a particular decision was made in a "narrowly partisan or political manner." Even the "chancellor's foot" standard in ancient equity jurisdiction was never this fuzzy.

As JUSTICE REHNQUIST tellingly observes, how does one limit -- on a principled basis -- today's new constitutional right? If a 14-year-old child may challenge a school board's decision to remove a book from the library, upon what theory is a court to prevent a like challenge to a school board's decision not to purchase that identical book? And at the even more "sensitive" level of "receiving ideas," does today's decision entitle student oversight of which courses may be added or removed from the curriculum, or even of what a particular teacher elects to teach or not teach in the [\*\*2823] classroom? Is not the "right to receive ideas" as much -- or indeed even more -- implicated in these educational questions? n2

-----Footnotes-----End Footnotes-----

[\*896] II

The plurality's reasoning is marked by contradiction. It purports to acknowledge the traditional role of school boards and parents in deciding what should be taught in the schools. It states the truism that the schools are "vitally important 'in the preparation of individuals for participation as citizens,' and as vehicles for 'inculcating fundamental values necessary to the maintenance of a democratic political system.'" *Ante*, at 864. Yet when a school board, as in this case, takes its responsibilities seriously and seeks to decide what the fundamental values are that should be imparted, the plurality finds a constitutional violation.

Just this Term the Court held, in an opinion I joined, that the children of illegal aliens must be permitted to attend the public schools. See *Plyler v. Doe*, *ante*, p. 202. Quoting from earlier opinions, the Court noted that the "'public [school is] a most vital civic institution for the preservation of democratic system of government'" and that the public [\*\*\*466] schools are "the primary vehicle for transmitting 'the values on which our society rests.'" *Ante*, at 221. By denying to illegal aliens the opportunity "to absorb the values and skills upon which our social order rests" the law under review placed a lifelong disability upon these illegal alien children. *Ibid*.

Today the plurality drains much of the content from these apt phrases. A school board's attempt to instill in its students the ideas and values on which a democratic system depends is viewed as an impermissible suppression of other ideas and values on which other systems of government and other societies thrive. Books may not be removed because [\*\*897] they are indecent; extol violence, intolerance, and racism; or degrade the dignity

of the individual. Human history, not the least that of the 20th century, records the power and political life of these very ideas. But they are not our ideas or values. Although I would leave this educational decision to the duly constituted board, I certainly would not *require* a school board to promote ideas and values repugnant to a democratic society or to teach such values to *children*.

In different contexts and in different times, the destruction of written materials has been the symbol of despotism and intolerance. But the removal of nine vulgar or racist books from a high school library by a concerned local school board does not raise this specter. For me, today's decision symbolizes a debilitating encroachment upon the institutions of a free people.

Attached as an Appendix hereto is Judge Mansfield's summary of excerpts from the books at issue in this case.

#### APPENDIX TO OPINION OF POWELL, J.,

#### DISSENTING

"The excerpts which led the Board to look into the educational suitability of the books in question are set out (with minor corrections after comparison with the text of the books themselves) below. The pagination and the underlinings are retained from the original report used by the board. In newer editions of some of the books, the quotes appear at different pages.

"1) *SOUL ON ICE* by Eldridge Cleaver

#### PAGE QUOTE

[\*\*2824] 157-158 ' . . . There are white men who will pay you to fuck their wives. They approach you and say, "How would you like to fuck a white woman?" "What is this?" you ask. "On the up-and-up," he assures you. "It's all right. She's my wife. She needs black rod, is all. She has to have it. It's like a medicine or drug to her. She has to have it. I'll pay you. It's all on the level, no trick involved. Interested?" [\*898] You go with him and he drives you to their home. The three of you go into the bedroom. There is a certain type who will leave you and his wife alone and tell you to pile her real good. After it is all over, he will pay you and drive you to wherever you want to go. Then there are some who like to peep at you through a keyhole and watch you have his woman, or peep at you through a window, or lie under the bed and listen to the creaking of the bed as you work out. There is another type who likes to masturbate while he stands beside the bed and watches you pile her. There is the type who likes to eat his woman up [\*\*\*467] after you get through piling her. And there is the type who only wants you to pile her for a little while, just long enough to thaw her out and kick her motor over and arouse her to heat, then he wants you to jump off real quick and he will jump onto her and together they can make it from there by themselves.'

"2) *A HERO AIN'T NOTHING BUT A SANDWICH* by Alice Childress

#### PAGE QUOTE

10 'Hell, no! *Fuck the society.*'

64-65 'The hell with the junkie, the wino, the capitalist, the welfare checks, the world . . . yeah, and *fuck* you too!'

75-76 'They can have back the spread and curtains, I'm too old for them *fuckin* bunnies anyway.'

"3) *THE FIXER* by Bernard Malamud

#### PAGE QUOTE

52 'What do you think goes on in the wagon at night: Are the drivers on their knees *fuckin* their mothers?'

90 '*Fuck yourself*, said the blinker, etc.'

92 'Who else would do anything like that but a *mother-fucking* Zhid?'

146 'No more noise out of you or I'll shoot your *Jew cock off*.'

189 'Also there's a lot of *fuckin* in the *Old Testament*, so how is that religious?'

192 'You better go *fuck yourself*, Bok, said Kogin, I'm onto your Jew tricks.'



[\*899] 215 'Ding-dong giddyap. A *Jew's cock's* in the devil's hock.'

216 'You *cocksucker* Zhid, I ought make you lick it up off the floor.'

"4) *GO ASK ALICE* by Anonymous

#### PAGE QUOTE

31 'I wonder if sex without acid could be so exciting, so wonderful, so indescribable. I always thought it just took a minute, or that it would be like dogs mating.'

47 'Chris and I walked into Richie and Ted's apartment to find the bastards stoned and making love to each other . . . low class queer.'

81 'shitty, goddamned, pissing, ass, goddamned beJesus, screwing life's, ass, shit. Doris was ten and had *humped* with who knows how many men in between . . . her current stepfather started having sex with her but good . . . *sonofabitch balling her*'

83 'but now when I face a girl its like facing a boy. I get all excited and turned on. *I want to screw with the girl.* . . .'

84 'I'd rather screw with a guy . . . sometimes I want one of the girls to kiss me. I want her to touch me, to have her sleep under me.'

84 'Another day, another *blow job* . . . If I don't give *Big Ass a blow* he'll cut off my supply . . . and LittleJacon is yelling, "Mama, *Daddy can't come now. He's humping Carla.*"

85 'Shit, goddamn, goddamn prick, son-of-a-bitch, ass, pissed, bastard, goddamn, bullshit

94 'I hope you have a *nice orgasm with your dog tonight.*'

110 'You *fucking* Miss Polly pure

117 'Then he said that all I needed was a good *fuck.*'

[\*\*2825] 146 'It might be great because I'm practically a virgin in the sense that I've never had sex except when I've been stoned. . . .'

"5) *SLAUGHTERHOUSE FIVE* by Kurt Vonnegut, Jr.

#### PAGE QUOTE

29 'Get out of the road, you dumb *motherfucker.*' The last word was still a novelty in the speech of white [\*\*\*468] people in 1944.

[\*900] It was fresh and astonishing to Billy, who had never *fucked* anybody . . .'

32 'You stake a guy out on an anthill in the desert -- see? He's facing upward, and you put *honey* all over his *balls and pecker*, and you cut off his eyelids so he has to stare at the sun till he dies.'

34 'He had a prophylactic kit containing two tough condoms 'For the prevention of disease only!' . . . He had a dirty picture of a *woman attempting sexual intercourse with a shetland pony.*'

94 & 95 'But the Gospels actually taught this: Before you kill somebody, make absolutely sure he isn't well connected . . . The flaw in the Christ stories, said the visitor from outer space, was that Christ who didn't look like much, was actually the son of the Most Powerful Being in the Universe. Readers understood that, so, when they came to the crucifixion, they naturally thought . . . Oh boy -- they sure picked the wrong guy to lynch this time! And that thought had a brother: There are right people to lynch. People not well connected . . . . The visitor from outer space made a gift to Earth of a new Gospel. In it, Jesus really WAS a nobody, and a pain in the neck to a lot of people with better connections than he had . . . . So the people amused themselves one day by nailing him to a cross and planting the cross in the ground. There couldn't possibly be any repercussions, the lynchers thought . . . since the new Gospel hammered home again and again what a nobody Jesus was. And then just before the nobody died . . . . The voice of God came crashing down. He told the people that he was adopting the bum as his son . . . God said this: *From this moment on, He will punish horribly anybody who torments a bum who has no*

*connections.'*

99 'They told him that there could be no Earthling babies without male homosexuals. There could be babies without female homosexuals.'

120 'Why don't you go *fuck* yourself? Don't think I haven't [\*901] tried . . . he was going to have revenge, and that revenge was sweet . . . It's the sweetest thing there is, said Lazzaro. People *fuck* with me, he said, and *Jesus Christ* are they ever fucking sorry.'

122 'And he'll pull out a gun and *shoot his pecker off*. The stranger'll let him think a couple of seconds about who Paul Lazzaro is and what life's gonna be like without a *pecker*. Then he'll shoot him once in the guts and walk away. . . . He died on account of this silly *cocksucker* here. So I promised him I'd have this silly *cocksucker* shot after the war.'

134 'In my prison cell I sit . . . With my *britches full of shit*, And my *balls are bouncing* gently on the floor. And I see the bloody snag when she bit me in the bag . . . Oh, I'll never fuck a *Polack* any more.'

173 'And the peckers of the young men would still be *semierect*, and their *muscles* would be *bulging like cannonballs*.'

175 'They didn't have *hard-ons* . . . Everybody else did.'

177 'The magazine, which was published for *lonesome men to jerk off to*.'

178 'and one critic said. . . . 'To describe *blow-jobs* artistically.'

"6) *THE BEST SHORT STORIES BY NEGRO WRITERS* Ed. by Langston Hughes

#### PAGE QUOTE

176 'like bat's shit and camel piss,'

[\*\*469] 228 'that no-count bitch of a daughter of yours is up there up North making a whore of herself.'

237 'they made her get out and stand in front of the headlights of the car and pull down her pants and raise her dress -- they said that was the only way they could be sure. And you can imagine what they said and what they did -- .'

[\*\*2826] 303 'You need some pussy. Come on, let's go up to the whore house on the hill.'

'Oh, these bastards, these bastards, this God damned Army and the bastards in it. The sons of bitches!'

436 'he produced a brown rag doll, looked at her again, then [\*902] grabbed the doll by its legs and tore it part way up the middle. Then he jammed his finger into the rip between the doll's legs. The other men laughed. . . .'

444 'The pimps, hustlers, lesbians, and others trying to misuse me.'

462 'But she had straight firm legs and her breasts were small and upright. No doubt if she'd had children her breasts would be hanging like little empty purses.'

464 'She first became aware of the warm tense nipples on her breasts. Her hands went up gently to clam them.' 'In profile, his penis hung like a stout tassel. She could even tell that he was circumcised.'

406 'Cadillac Bill was busy following Luheaster around, rubbing her stomach and saying, "Magic Stomach, Magic Stomach, bring me a little baby cadillac."' 'One of the girls went upstairs with Red Top and stayed for about forty-five minutes.'

"7) *BLACK BOY* by Richard Wright

#### PAGE QUOTE

70-71 'We black children -- seven or eight or nine years of age -- used to run to the Jew's store and shout:

. . . Bloody Christ Killers

Never trust a Jew

Bloody Christ Killers

What won't a Jew do . . .

Red, white and blue

Your pa was a Jew

Your ma a dirty dago

What the hell is you?'

265 'Crush that nigger's nuts, nigger!' 'Hit that nigger!'

'Aw, fight, you goddam niggers!' 'Sock 'im, in his f-k-g-piece!' 'Make 'im bleed!'

"8) *LAUGHING BOY* by Oliver LaFarge

#### *PAGE QUOTE*

38 'I'll tell you, she is all bad; for two bits she will do the worst thing.'

[\*903] 258-9 'I was frightened when he wanted me to lie with him, but he made me feel all right. He knew all about how to make women forget themselves, that man.'

"9) *THE NAKED APE* by Desmond Morris

#### *PAGE QUOTE*

73-74 'Also, the frontal approach provides the maximum possibility for stimulation of the female's clitoris during the pelvic thrusting of the male. It is true that it will be passively, stimulated by the pulling effect of the male's thrusts, regardless of his body position in relation to the female, but in a face-to-face mating there will in addition be the direct rhythmic pressure of the male's pubic region on to the clitoral area, and this will considerably heighten the stimulation . . . ' 'So it seems plausible to consider that face-to-face copulation is basic to our species. There are, of course, a number of variations that do not eliminate the frontal element: male above, female above, side by side, squatting, standing, and so on, but the most efficient and commonly used one is with both partners horizontal, [\*\*\*470] the male above the female. . . .'

80 ' . . . This broadening of the penis results in the female's external genitals being subjected to much more pulling and pushing during the performance of pelvic thrusts. With each inward thrust of the penis, the clitoral region is pulled downwards and then with each withdrawal, it moves up again. Add to this the rhythmic pressure being exerted on the clitoris region by the pubic region of the frontally copulating male, and you have a repeated massaging of the clitoris that -- were she a male -- would virtually be masturbatory.'

94-99 ' . . . If either males or females cannot for some reason obtain sexual access to their opposite numbers, they will find sexual outlets in other ways. They may use other members of their own sex, or they [\*\*2827] may even use members of other species, or they may masturbate. . . .'

"10) *READER FOR WRITERS* . . ."

638 F.2d 404, 419-422, n. 1 (CA2 1980) (Mansfield, J., dissenting).

[\*904] **JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE POWELL join, dissenting.**

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**Respondents also agreed that, "[although] the books themselves [\*907] were excluded from use in the**

schools in any way, [petitioners] have not precluded discussion about the themes of the books or the books themselves." App. 140. JUSTICE BRENNAN's concern with the "suppression of ideas" thus seems entirely unwarranted on this state of the record, and his creation of constitutional rules to cover such eventualities is entirely gratuitous. \\\\\\\

In the course of his discussion, JUSTICE BRENNAN states:

"Petitioners rightly possess significant discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner. If a Democratic school board, motivated by party affiliation, ordered the removal of all books written by or in favor of Republicans, few would doubt that the order violated the constitutional rights of the students . . . . The same conclusion would surely apply if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration. Our Constitution does not permit the official suppression of *ideas*." *Ante*, at 870-871 (emphasis in original).

[\*\*2829] I can cheerfully concede all of this, but as in so many other cases the extreme examples are seldom the ones that arise in the real world of constitutional litigation. In *this case* the facts taken most favorably to respondents suggest that nothing of this sort happened. The nine books removed undoubtedly did contain "ideas," but in the light of the excerpts from them found in the dissenting opinion of Judge Mansfield in the Court of Appeals, it is apparent that eight of them contained demonstrable amounts of vulgarity and profanity, see 638 F.2d 404, 419-422, n. 1 (CA2 1980), and the ninth contained [\*908] nothing that could be considered partisan or political. [JAW: refers to the book containing Jonathan Swift's *Modest Proposal*] see *id.*, at 428, n. 6. As already demonstrated, respondents admitted as much. Petitioners did not, for the reasons stated hereafter, run afoul of the First and Fourteenth Amendments by removing these particular books from the library in the manner in which they did. I would save for another day -- feeling quite confident that that day will not arrive -- the extreme examples posed in JUSTICE BRENNAN's opinion.

[\*\*\*473] B

Considerable light is shed on the correct resolution of the constitutional question in this case by examining the role played by petitioners. Had petitioners been the members of a town council, I suppose all would agree that, absent a good deal more than is present in this record, they could not have prohibited the sale of these books by private booksellers within the municipality. But we have also recognized that the government may act in other capacities than as sovereign, and when it does the First Amendment may speak with a different voice:

"[It] cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968).

By the same token, expressive conduct which may not be prohibited by the State as sovereign may be proscribed by the State as property owner: "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." [\*909] *Adderley v. Florida*, 385 U.S. 39, 47 (1966) (upholding state prohibition of expressive conduct on certain state property).

With these differentiated roles of government in mind, it is helpful to assess the role of government as educator, as compared with the role of government as sovereign. When it acts as an educator, at least at the elementary and secondary school level, the government is engaged in inculcating social values and knowledge in relatively impressionable young people. Obviously there are innumerable decisions to be made as to what courses should be taught, what books should be purchased, or what teachers should be employed. In every one of these areas the members of a school board will act on the basis of their own personal or moral values, will attempt to mirror those of the community, or will abdicate the making of such decisions to so-called "experts."<sup>n5</sup> In this connection I find myself entirely in agreement with the observation of the Court of Appeals for the Seventh Circuit in *Zykan v. Warsaw Community School Corp.*, 631 F.2d 1300, 1305 [\*2830] (1980), that it is "permissible and appropriate for local boards to make educational decisions based upon their personal social, political and moral views." In the very course of administering the many-faceted operations of

a school district, the mere decision to purchase [\*\*\*474] some books will necessarily preclude the possibility of purchasing others. The decision to teach a particular subject may preclude the possibility of teaching another subject. A decision to replace a teacher because of ineffectiveness may by implication be seen as a disparagement of the subject matter taught. In each of these instances, however, the book or the exposure to the [\*910] subject matter may be acquired elsewhere. The managers of the school district are not proscribing it as to the citizenry in general, but are simply determining that it will not be included in the curriculum or school library. In short, actions by the government as educator do not raise the same First Amendment concerns as actions by the government as sovereign.

-----Footnotes-----

n5 There are intimations in JUSTICE BRENNAN's opinion that if petitioners had only consulted literary experts, librarians, and teachers their decision might better withstand First Amendment attack. *Ante*, at 874, and n. 26. These observations seem to me wholly fatuous; surely ideas are no more accessible or no less suppressed if the school board merely ratifies the opinion of some other group rather than following its own opinion.

-----End Footnotes-----

## II

JUSTICE BRENNAN would hold that the First Amendment gives high school and junior high school students a "right to receive ideas" in the school. *Ante*, at 867. This right is a curious entitlement. It exists only in the library of the school, and only if the idea previously has been acquired by the school in book form. It provides no protection against a school board's decision not to acquire a particular book, even though that decision denies access to ideas as fully as removal of the book from the library, and it prohibits removal of previously acquired books only if the remover "[dislikes] the ideas contained in those books," even though removal for any other reason also denies the students access to the books. *Ante*, at 871-872.

But it is not the limitations which JUSTICE BRENNAN places on the right with which I disagree; they simply demonstrate his discomfort with the new doctrine which he fashions out of whole cloth. It is the very existence of a right to receive information, in the junior high school and high school setting, which I find wholly unsupported by our past decisions and inconsistent with the necessarily selective process of elementary and secondary education.

## A

[\*\*\*HR2C] [2C]

The right described by JUSTICE BRENNAN has never been recognized in the decisions of this Court and is not supported by their rationale. JUSTICE BRENNAN correctly observes that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." [\*911] *Tinker v. Des Moines School District*, 393 U.S. 503, 506 (1969). But, as this language from *Tinker* suggests, our past decisions in this area have concerned freedom of speech and expression, not the right of access to particular ideas. We have held that students may not be prevented from symbolically expressing their political views by the wearing of black arm bands, *Tinker v. Des Moines School District*, *supra*, and that they may not be forced to participate in the symbolic expression of saluting the flag, *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). But these decisions scarcely control the case before us. Neither the District Court nor the Court of Appeals found that petitioners' removal of books from the school libraries infringed respondents' right to speak or otherwise express themselves.

[\*\*\*475] Despite JUSTICE BRENNAN's suggestion to the contrary, this Court has never held that the First Amendment grants junior high school and high school students a right of access to certain information in school. It is true that the Court has recognized a limited version of that right in other settings, and JUSTICE BRENNAN quotes language from five such decisions and one of his own concurring opinions in order to demonstrate the viability of the right-to-receive doctrine. *Ante*, at 866-867. But not one of these cases concerned or even purported to discuss elementary or secondary educational institutions. n6 [\*\*\*2831] JUSTICE BRENNAN brushes over this significant [\*912] omission in First Amendment law by citing *Tinker v. Des Moines School District* for the proposition that "students too are beneficiaries of this [right-to-receive] principle." *Ante*, at 868. But *Tinker* held no such thing. One may read *Tinker* in vain to find any recognition of a First Amendment right to receive information. *Tinker*, as already mentioned, was based entirely on the students' right to express their political views.

-----Footnotes-----End Footnotes-----

Nor does the right-to-receive doctrine recognized in our past decisions apply to schools by analogy. JUSTICE BRENNAN correctly characterizes the right of access to ideas as "an inherent corollary of the rights of free speech and press" which "follows ineluctably from the *sender's* First Amendment right to send them." *Ante*, at 867 (emphasis in original). But he then fails to recognize the predicate right to speak from which the students' right to receive must follow. It would be ludicrous, of course, to contend that all authors have a constitutional right to have their books placed in junior high school and high school libraries. And yet without such a right our prior precedents would not recognize the reciprocal right to receive information. JUSTICE BRENNAN disregards this inconsistency with our prior cases and fails to explain the constitutional or logical underpinnings of a right to hear ideas in a place where no speaker has the right to express them.

JUSTICE BRENNAN also correctly notes that the reciprocal nature of the right to receive information derives [\*\*\*476] from the fact that it "is a necessary predicate to the *recipient's* meaningful [\*913] exercise of his own rights of speech, press, and political freedom." *Ibid.* (emphasis in original). But the denial of access to ideas inhibits one's own acquisition of knowledge only when that denial is relatively complete. If the denied ideas are readily available from the same source in other accessible locations, the benefits to be gained from exposure to those ideas have not been foreclosed by the State. This fact is inherent in the right-to-receive cases relied on by JUSTICE BRENNAN, every one of which concerned the complete denial of access to the ideas sought. n7 Our past decisions are thus unlike [\*\*2832] this case where the removed books are readily available to students and nonstudents alike at the corner bookstore or the public library.

-----Footnotes-----End Footnotes-----

B

There are even greater reasons for rejecting JUSTICE BRENNAN's analysis, however, than the significant fact that we have never adopted it in the past. "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, has long been recognized by our decisions." *Ambach v. Norwick*, 441 U.S. 68, 76 (1979). Public [\*914] schools fulfill the vital role of teaching students the basic skills necessary to function in our society, and of "inculcating fundamental values necessary to the maintenance of a democratic political system." *Id.*, at 77. The idea that such students have a right of access, in the school, to information other than that thought by their educators to be necessary is contrary to the very nature of an inculcative education.

Education consists of the selective presentation and explanation of ideas. The effective acquisition of knowledge depends upon an orderly exposure to relevant information. Nowhere is this more true than in elementary and secondary schools, where, unlike the broad-ranging inquiry available to university students, the courses taught are those thought most relevant to the young students' individual development. Of necessity, elementary and secondary educators must separate the relevant from the irrelevant, the appropriate from the inappropriate. Determining what information not to present to the students is often as important as identifying relevant material. This winnowing process necessarily leaves much information to be discovered by students at another [\*\*\*477] time or in another place, and is fundamentally inconsistent with any constitutionally required eclecticism in public education.

JUSTICE BRENNAN rejects this idea, claiming that it "overlooks the unique role of the school library." *Ante*, at 869. But the unique role referred to appears to be one of JUSTICE BRENNAN's own creation. No previous decision of this Court attaches unique First Amendment significance to the libraries of elementary and secondary schools. And in his paean of praise to such libraries as the "environment especially appropriate for the recognition of the First Amendment rights of students," *ante*, at 868, JUSTICE BRENNAN turns to language about public libraries from the three-Justice plurality in *Brown v. Louisiana*, 383 U.S. 131 (1966), and to language about universities and colleges from *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). *Ante*, at 868. Not only is his [\*915] authority thus transparently thin, but also, and more importantly, his reasoning misapprehends the function of libraries in our public school system.

As already mentioned, elementary and secondary schools are inculcative in nature. The libraries of such



schools serve as supplements to this inculcative role. Unlike university or public libraries, elementary and secondary school libraries are not designed for freewheeling inquiry; they are tailored, as the public school curriculum is tailored, to the teaching of basic skills and ideas. Thus, JUSTICE BRENNAN cannot rely upon the nature of school libraries to escape the fact that the First Amendment right to receive information simply has no application to the one public institution which, by its very nature, is a place for the selective conveyance of ideas.

After all else is said, however, the most obvious reason that petitioners' removal of the books did not violate respondents' right to receive information is the ready availability of the books elsewhere. Students are not denied books by their removal from a school library. The books may be borrowed from a public library, read at a university library, purchased at a bookstore, or loaned by a friend. The government [\*\*2833] as educator does not seek to reach beyond the confines of the school. Indeed, following the removal from the school library of the books at issue in this case, the local public library put all nine books on display for public inspection. Their contents were fully accessible to any inquisitive student.

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[\*\*2834] It is difficult to tell from JUSTICE [\*\*\*479] BRENNAN's opinion just what motives he would consider constitutionally impermissible. I had thought that the First Amendment proscribes content-based restrictions on the marketplace of ideas. See *Widmar v. Vincent*, 454 U.S. 263, 269-270 (1981). JUSTICE BRENNAN concludes, however, that a removal decision based solely upon the "educational suitability" of a book or upon its perceived vulgarity is "perfectly permissible." *Ante*, at 871 (quoting Tr. of Oral Arg. 53). But such determinations are based as much on the content of the book as determinations that the book espouses pernicious political views.

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D

Intertwined as a basis for JUSTICE BRENNAN's opinion, along with the "right to receive information," is the statement that "[our] Constitution does not permit the official suppression of *ideas*." *Ante*, at 871 (emphasis in original). There would be few champions, I suppose, of the idea that our Constitution *does* permit the official suppression of ideas; my difficulty is not with the admittedly appealing catchiness of the phrase, but with my doubt that it is really a useful analytical tool in solving difficult First Amendment problems. Since the phrase appears in the opinion "out of the blue," without any reference to previous First Amendment decisions of this Court, it would appear that the Court for years has managed to decide First Amendment cases without it.

I would think that prior cases decided under established First Amendment doctrine afford adequate guides in this area without resorting to a phrase which seeks to express "a complicated process of constitutional adjudication by a deceptive formula." *Kovacs v. Cooper*, 336 U.S. 77, 96 (1949) (Frankfurter, J., concurring). A school board which publicly adopts a policy forbidding the criticism of United States foreign policy by any student, any teacher, or any book on the library shelves is indulging in one kind of "suppression of ideas." A school board which adopts a policy that there shall be no discussion of current events in a class for high school sophomores devoted to second-year Latin "suppresses ideas" in quite a different context. A teacher who had a lesson plan consisting of 14 weeks of study of United States history from 1607 to the present time, but who because of a week's illness is forced to forgo the most recent 20 years of American history, may "suppress ideas" in still another way.

[\*919] I think a far more satisfactory basis for addressing these kinds of questions is found in the Court's language in *Tinker v. Des Moines School District*, where we noted:

[\*\*\*480] "[A] particular symbol -- black armbands worn to exhibit opposition to this Nation's involvement in Vietnam -- was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible." 393 U.S., at 510-511.

In the case before us the petitioners may in one sense be said to have "suppressed" the "ideas" of vulgarity and profanity, but that is hardly an apt description of what was done. They ordered the removal of books containing vulgarity and profanity, but they did not attempt to preclude discussion about the themes of the books or the books themselves. App. 140. Such a decision, [\*\*2835] on respondents' version of the facts in this case, is sufficiently related to "educational suitability" to pass muster under the First Amendment.

E

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[\*920] I think the Court will far better serve the cause of First Amendment jurisprudence by candidly recognizing that the role of government as sovereign is subject to more stringent limitations than is the role of government as employer, property owner, or educator. It must also be recognized that the government as educator is subject to fewer strictures when operating an elementary and secondary school system than when operating an institution of higher learning. Cf. *Tilton v. Richardson*, 403 U.S. 672, 685-686 (1971) (opinion of BURGER, C. J.). With respect to the education of children in elementary and secondary schools, the school board may properly determine in many cases that a particular book, a particular course, or even a particular area of knowledge is not educationally suitable for inclusion within the body of knowledge which the school seeks to impart. Without more, this is not a condemnation of the book or the course; it is only a determination akin to that referred to by the Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926): "A nuisance may be merely a right thing in the wrong place, -- like a pig in the parlor instead of the barnyard."

III

Accepting as true respondents' assertion that petitioners acted on the basis of their own "personal values, morals and tastes," App. 139, I find the actions taken in this case hard [\*\*\*481] to distinguish from the myriad choices made by school boards in the routine supervision of elementary and secondary schools. "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." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). In this case respondents' rights of free speech and expression were not infringed, and by respondents' own admission no ideas were "suppressed." I would leave to another day the harder cases.

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[\*921] **JUSTICE O'CONNOR, dissenting.**

If the school board can set the curriculum, select teachers, and determine initially what books to purchase for the school library, it surely can decide which books to discontinue or remove from the school library so long as it does not also interfere with the right of students to read the material and to discuss it. As JUSTICE REHNQUIST persuasively argues, the plurality's analysis overlooks the fact that in this case the government is acting in its special role as educator.

I do not personally agree with the Board's action with respect to some of the books in question here, but it is not the function of the courts to make the decisions that have been properly relegated to the elected members of school boards. It is the school board that must determine educational suitability, and it has done so in this case. I therefore join THE CHIEF JUSTICE's dissent.



Published: April 13, 1988

# Hazelwood Reaffirms First Amendment Values

By Bruce C. Hafen

The Supreme Court's recent decision in *Hazelwood School District v. Kuhlmeier*, which authorizes educators to supervise the content of official high-school newspapers, is the Court's most significant ruling in a free-speech case involving public-school students since it decided *Tinker v. Des Moines Independent Community School District* almost 20 years ago.

Not simply marking the Court's first application of constitutional principles to school newspapers, the *Hazelwood* decision also creates a category of student speech to which *Tinker* does not apply: "school-sponsored expressive activities."

Rather than weakening its commitment to the constitutional rights of students, the Court is attempting to strengthen students' most fundamental interest in the underlying principles of free expression: the right to develop their own educated capacity for self-expression. Schools as well as courts, the ruling suggests, can develop and protect the values of the First Amendment.

The *Tinker* decision (1969) upheld the right of students to wear black armbands to protest the war in Vietnam. The idea that students are entitled to some degree of independent expression was important in a day of mounting national frustration and of explosive pressure from young people anxious to vent their grievances.

Since that time, both lower courts and commentators have interpreted *Tinker* to mean that a school is much like a public forum, and that student expression should be limited only when it could cause a major disruption or other serious harm in the school.

In *Bethel School District v. Fraser* (1986), however, the Supreme Court held that a high school could discipline a student for a vulgar speech in a student-body assembly, even though the speech did not cause a serious disruption.

Reading *Fraser* narrowly, some people thought the case dealt only with vulgarity. Now, *Hazelwood* has confirmed that *Fraser* turned not only on the vulgarity of the student's speech, but also on the school's having sponsored the assembly.

In the *Hazelwood* ruling, the Court held that educators have presumptive control over "school-sponsored publications, theatrical productions, and other expressive activities," whenever such activities are supervised by faculty members and involve the educational mission of the school in a way that implies school sponsorship. Students' First Amendment rights outweigh educators' decisions within this realm

"only when the [educator's] decision ... has no valid educational purpose," the Court said.

By creating this broad category of education-related speech in which courts may give only minimal scrutiny to educators' judgment calls, the Court necessarily limited the future application of Tinker to "personal expression that happens to occur on the school premises."

Some legal scholars--and the dissenting Justices in Hazelwood--argue persuasively that First Amendment theory should act primarily to limit the exercise of educators' discretion. This interpretation, they say, would help protect children against the risks of indoctrination and teach the value of participatory democracy and personal autonomy. Students would learn that the purpose of the Bill of Rights is to limit state authority.

But the possible necessity for judicial intervention intended to limit abuses of adult discretion does not justify removing all restrictions on freedom of expression for students. Indeed, young people may need protection against the harmful consequences of their own decisions as much as they need protection against abuses by school personnel. That fact about children lies at the base of our legal system's concept of minority status.

Those who argue for limitations on the exercise of educators' discretion also presuppose that children have the rational capacity necessary for meaningful participation in the political process and in the marketplace of ideas.

But because, as Justice Potter Stewart once wrote, children are "not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees," they are not granted the most fundamental of democratic rights--the right to vote.

Moreover, it is because children lack the ability to evaluate the meaning of apparent state sponsorship that the First Amendment's establishment clause forbids public prayer in school--even while it permits prayer in a legislative chamber.

Overlooking the issue of mature capacity, the dissenting Justices in Hazelwood argued that the majority's fears about erroneous attribution of official sponsorship to ideas contained in a school newspaper could be overcome by publishing a disclaimer of such sponsorship.

Yet some of those same Justices have made it clear in the Court's establishment-clause cases that a public disclaimer issued prior to a classroom prayer or posted as a footnote to copies of the Ten Commandments placed on school walls could by no means remove the appearance of school endorsement in the eyes of children.

In addition to the difficulties created by children's lack of mature capacity, the idea that the First Amendment exists only to constrain state or institutional action overlooks--and indeed could hinder--the affirmative contributions schools can make in fulfilling the amendment's purposes. A child's most

fundamental interest in First Amendment values may be his right to be taught the capacity to express himself, vote with understanding, and enjoy meaningful personal autonomy.

Freedom of expression has two meanings: freedom from restraints and freedom for expression--having the capacity to express oneself. Until children have developed freedom of expression in the second sense, their freedom in the first sense holds only limited value. A child's "right" to be educated, then, is rooted in the personal and social interests that erlie the First Amendment.

Even while accepting the need for such development, some might argue that, with protection from adult authority, children will effectively cultivate their own faculties. This view--a major premise of the reform era of the 1960's and 1970's, symbolized by anti-authoritarian protests on high-school as well as college campuses--also found its way into popular childhood-education theories challenging the need for adult authority. A.S. Neill's Summerhill, for example, begins with the assumption that a child is "innately wise and realistic. If left to himself without adult suggestion of any kind, he will develop as far as he is capable of developing."

The evidence that has accumulated since those years, however, suggests otherwise. The widespread reduction of institutional authority in schools over the past generation, for example, has been identified as a primary factor in the recently publicized declines in academic achievement among the nation's students.

Indeed, most studies of that period agree with the assessment of Allan Bloom in *The Closing of the American Mind*: "You don't replace something with nothing. Of course, that was exactly what the educational reform of the 60's was doing."

Whatever one makes of this evidence, the question whether authoritarian or anti-authoritarian approaches will best educate the minds and expressive powers of children is--as the Supreme Court now recognizes--more a matter of educational philosophy and practice than it is an issue of constitutional law.

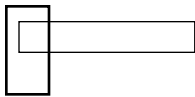
For that reason alone, First Amendment theories applied by courts primarily on the basis of anti-authoritarian assumptions are at best a clumsy and limited means of ensuring optimal development toward a mastery of either democratic values or basic intellectual skills.

A major contribution of the Hazelwood ruling, then, is its reaffirmation of the schools' institutional role--and their accountability to the public for its responsible fulfillment--in nurturing the underlying values of the First Amendment, for the sake not only of their students but also of the larger society.

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# Sticks, Stones, and Ideology: The Discourse of Reform in Teacher Education

by Marilyn Cochran-Smith and Mary Kim Fries

Many highly politicized debates about reforming teacher education are embedded within two larger national agendas: the agenda to professionalize teaching and teacher education, which is linked to the K–12 standards movement, and the movement to deregulate teacher preparation, which aims to dismantle teacher education institutions and break up the monopoly of the profession. In this article, the authors analyze how these two agendas are publicly constructed, critiqued, and debated, drawing on public documents from each side and using the language and arguments of the advocates themselves. The authors argue that, despite very different agendas, the discourse of both deregulation and professionalization revolves rhetorically around the establishment of three interrelated warrants, which legitimize certain policies and undermine others. Taken together, what Cochran-Smith and Fries label “the evidentiary warrant,” “the political warrant,” and “the accountability warrant,” are intended by advocates of competing agendas to add up to “common sense” about how to improve the quality of the nation’s teachers. The authors conclude that in order to understand the politics of teacher education and the complexities of competing reform agendas, their underlying ideals, ideologies, and values must be debated along with and in relation to “the evidence” about teacher quality.

Public critiques of teachers and teacher education are not new on the educational scene, nor are scholarly debates within the profession. Arguably, however, there have never before been such blistering media commentaries and such highly politicized battles about teacher education as those that have dominated the public discourse and fueled legislative reforms at the state and federal levels during the last five years or so. Many aspects of these debates can be understood as part of two much larger debates about school reform, particularly two larger national agendas, which are overlapping in certain ways but simultaneously competing and even contradictory in many others (Apple, 2000, 2001; Cochran-Smith, 2001a, 2001b; Earley, 2000).

The agenda to *professionalize* teaching and teacher education, which is linked to the K–12 curriculum standards movement, has been spear-headed by Linda Darling-Hammond and the National Commission on Teaching and America’s Future (NCTAF) and forwarded through the joint efforts of the National Council for the Accreditation of Teacher Education (NCATE), the Na-

tional Board for Professional Teaching Standards (NBPTS), and the Interstate New Teacher Assessment and Support Consortium (INTASC) (Gallagher & Bailey, 2000). These projects reflect a broad-based effort to develop a consistent approach to teacher education nationwide based on high standards for the initial preparation, licensing, and certification of teachers. Supported by foundations including the Carnegie Corporation, the Pew Charitable Trusts, the Ford Foundation, and the DeWitt Wallace Reader’s Digest Fund, proponents of professionalization advocate standards-based teacher preparation and professional development as well as teacher assessments based on performance across the professional lifespan. In direct opposition to the professionalization agenda, however, is the well-publicized movement to *deregulate* teacher preparation by dismantling teacher education institutions and breaking up the monopoly that the profession has “too long” enjoyed. Supported by conservative political groups and private foundations including the Thomas B. Fordham Foundation, the Heritage Foundation, the Pioneer Institute, and the Manhattan Institute, the deregulation agenda begins with the premise that the requirements of state licensing agencies and schools of education are unnecessary hurdles that keep bright young people out of teaching and focus on social goals rather than academic achievement. Advocates of deregulation push for alternate routes into teaching and high stakes teacher tests as the major gatekeeper for the profession.

In this paper we look closely at how the discourse of these two competing agendas is being publicly constructed, critiqued, and debated. Our intention here is not to determine which agenda is “right” or to reveal the “true” underlying motives of the proponents of either one.<sup>1</sup> Rather, we offer an analysis of the way each constructs its own arguments as well as how each critiques the positions of the other side, using the language of these groups themselves and quoting from published articles and papers as well as other public documents. We argue that sorting out contradictory assertions will not be accomplished simply through “unbiased” evaluations of “the evidence,” although efforts to do so are important and useful.<sup>2</sup> Instead, we suggest that it is also necessary to unpack the values and politics in which these viewpoints are embedded including their differing notions of evidence, fairness, results, progress, public benefit, the American way, and other key ideas. We suggest that although proponents of each agenda use “ideology” and other value-laden terms as pejoratives to critique the other, both agendas are themselves ideological in the sense that they are driven by ideas, ideals, values, and assumptions about the purposes of schooling, the social and economic future of the nation, and the role of public education in a democratic society. We caution that unless underlying ideologies

and values are debated along with and in relation to “the evidence” about teacher quality, we will make little progress in understanding the discourse of reform and the competing agendas that currently dominate the politics of teacher education.

### Common Sense about Teacher Education Reform: Three Warrants for Action

Discourse analysis is often used to examine how “different versions of the world” are produced through texts and talk (Silverman, 2000, p. 826). To prepare this analysis, we gathered a group of public policy documents, scholarly articles, and transcriptions of public talk in order to analyze how the discourse of two national agendas for teacher education is being constructed and debated, some of which are listed in Table 1.<sup>3</sup> We concluded that the discourse revolves around three major warrants.

The term “warrant” is derived from the Germanic verb, *war-jan* or *werjan*, meaning to protect or defend but also to trust. In Old German, the word was used to refer to a commission or written document that gave one person or group the authority to do something, especially to pay another person, but also authorized the latter to receive money or other consideration. We use “warrant” in this paper in the more general sense to signify justifica-

tion, authority, or “reasonable grounds,” particularly those that are established for some act, course of action, statement, or belief. We suggest that the discourse of both professionalization and deregulation of teacher education revolves around the establishment of three warrants that legitimize a particular set of policy implications and at the same time undermine competing policies: *the evidentiary warrant*, *the political warrant*, and *the accountability warrant*. Taken together, these three warrants are used to add up to “common sense” about what should be done to improve the quality of the nation’s teachers (See Figure 1).

### *The Evidentiary Warrant: Empirical Versus Ideological Positions*

The professionalization-deregulation debate has been carried on in scholarly journals as well as in the media and in many policy and professional arenas. In the scholarly literature, the focus has been primarily on “what the evidence actually says” about teacher education based on meta-analyses and/or syntheses of previous and current empirical work. The point is to make policy recommendations that, when implemented, will yield value-added investments of state and/or federal resources. In most of the scholarly debates, the emphasis is on establishing *the evidentiary*

**Table 1. Some Key Documents That Speak to Each Agenda for Reforming Teacher Education**

The Professionalization Agenda			The De-Regulation Agenda		
Author	Copyright Date	Title	Author	Copyright Date	Title
NCTAF	1996	What matters most: Teaching for America’s future	Goldhaber & Brewer	1996	Evaluating the effect of teacher degree level on educational performance
NCTAF	1997	Doing what matters most	Farkas & Johnson	1997	Different drummers
Wise	1998	Assuring quality for the nation’s teachers	Ballou & Podgursky	1997	Reforming teacher training and recruitment
Darling-Hammond	2000	Teacher quality and student achievement	Ballou & Podgursky	1999	Teacher training and licensure: A layman’s guide
NCATE	1999	ETS study shows NCATE makes a difference	Finn, Kanstoroom, & Petrilli	1999	The quest for better teachers: Grading the states
Wise	1999	Standards or no standards? Teacher quality in the 21st century	Fordham Foundation	1999	The teachers we need and how to get more of them
Darling-Hammond & Sykes	1999	Teaching as the learning profession: Handbook of policy and practice	Kanstoroom	1999	Boosting teacher quality: A common-sense proposal
Wise & Leibbrand	2000	Standards and teacher quality: Entering the new millennium	Stotsky	1999	Losing our language
Earlye	2000	Finding the culprit	Wilcox & Finn	1999	Board games
Schalock & Imig	2000	Shulman’s union of insufficiencies +7	Kanstoroom & Finn	1999	Better teachers, better schools
Darling-Hammond	2000	Reforming teacher preparation and licensing: Debating the evidence	Ballou & Podgursky	2000	Reforming teacher preparation and licensing: What is the evidence?
			Finn & Petrilli	2000	The state of state standards 2000



FIGURE 1. *Three warrants that have shaped the debate about teacher education reform.*

*warrant*, a term often used in qualitative research to refer to the validity of analyses based on repeated testing of confirming and disconfirming evidence (Erickson, 1986). We use the term here more generally to refer to the set of justifications and grounds that are offered for conclusions and policy recommendations based “entirely” (or at least purported to rest entirely) on empirical data, evidence, and facts.

Emblematic of the debate between those who favor professionalization and those who favor deregulation is the ongoing controversy about the impact of teacher quality on the learning of K–12 students. Speaking for NCTAF, for example, Darling-Hammond (1998) has argued that a growing body of research “appears to confirm” that teacher knowledge and teacher expertise are significant influences on student learning. In fact, Darling-Hammond, the NCTAF, and other proponents of increased professionalism for teachers and teacher educators assert that the evidence suggests that teacher education “matters most” in educational reform (Darling-Hammond, 2000b; Darling-Hammond & Sykes, 1999; NCTAF, 1996, 1997):

The findings of both the qualitative and quantitative analyses suggest that policy investments in the quality of teachers may be related to improvements in student performance. Quantitative analyses indicate that measures of teacher preparation and certification are by far the strongest correlates of student achievement in reading and mathematics, both before and after controlling for student poverty and language status. . . . This analysis suggests that policies adopted by states regarding teacher education, licensing, hiring, and professional development may make an important difference in the qualifications and capacities that teachers bring to their work. (Darling-Hammond, 2000b, p. 1)

On the other hand, Dale Ballou and Michael Podgursky, economists whose analysis appears in the Fordham Foundation’s

monograph (Kanstaroom & Finn, 1999) on how to produce better teachers and better schools, conclude that teacher education doesn’t matter much at all:

[T]eacher ability appears to be much more a function of innate talents than the quality of education courses. Teachers themselves tell us that this is so. We come to similar conclusions when we examine the determinants of scores on teacher licensing examinations. Finally, teachers who enter through alternative certification programs seem to be at least as effective as those who completed traditional training, suggesting that training does not contribute very much to teaching performance, at least by comparison with other factors. (Ballou & Podgursky, 1999, p. 57)

The introduction to the Fordham Foundation’s monograph (Thomas B. Fordham Foundation, 1999) reiterates Ballou and Podgursky’s conclusion in no uncertain terms:

We are struck by the paucity of evidence linking inputs [courses taken, requirements met, time spent, and activities engaged in] with actual teacher effectiveness. In a meta-analysis of close to four hundred studies of the effect of various school resources on pupil achievement, very little connection was found between the degrees teachers had earned or the experience they possessed and how much their students learned. (p. 18)

Again it is useful to contrast this conclusion with Linda Darling-Hammond’s conclusion in NCTAF’s second report, *Doing What Matters Most: Investing in Quality Teaching* (1997):

Reviews of more than two hundred studies contradict the long-standing myths that ‘anyone can teach’ and that ‘teachers are born and not made.’ . . . [T]eachers who are fully prepared and certified in both their discipline and in education are more highly rated and are more successful with the students than are teachers without preparation, and those with greater training . . . are more effective than those with less. (p. 10)

Nowhere is the battle for the evidentiary warrant more clear than in the recent *Teachers College Record* exchange between Ballou and Podgursky and Darling-Hammond.<sup>4</sup> In this blunt exchange, both parties go to some lengths to cast their own positions as “strictly” empirical and at the same time to question the empirical validity of the other’s position. Ballou and Podgursky (2000) directly attack the findings of NCTAF by asserting:

The commission overstates policy implications, ignoring critical limitations of the research. In many instances, the commission flatly misreports and misrepresents what these studies show. . . . Like its 1997 predecessor, the NCTAF’s latest report contains numerous errors and misrepresentations of the evidence. (p. 8)

[T]he commission’s statement that teacher qualifications account for 40% of the measured variance in student scores is flatly incorrect; indeed, it is a statistical solecism. (pp. 13–14)

Speaking for NCTAF, Darling-Hammond (2000a) emphatically refutes Ballou and Podgursky’s use of evidence as well as their conclusions. She claims:

In this volume of the *Teachers College Record*, Ballou and Podgursky go further to charge, falsely in each instance, that the Commission has misrepresented research data and findings. In the course of their argument, their critique itself misreports data, misrepresents the

Commission's statements and recommendations, and variously ignores and misconstrues the research evidence presented in support of the report's key findings. (p. 29)

In this contest to establish the evidentiary warrant, the point is to focus on facts established through standard quantitative research conventions for data collection and analysis. Each side endeavors to construct its own warrant but also to undermine the warrant of the other by pointing out in explicit detail where methodological errors have been made, where the data reported are incorrect or incomplete, and/or where faulty logic or reasoning have led to inaccuracies and errors about the nature or size of effects.

In this way, each side constructs its own case as if it were neutral, a-political, and value-free, based solely on the empirical and certified facts of the matter and not embedded within or related to a particular agenda that is political or ideological. In fact, it is clear from the discourse that neither side can afford to be cast as ideological. Each therefore implicitly (or explicitly) eschews the notion that there *is* an ideological basis to its position and uses the term as an epithet to cast aspersions on, undermine, and ultimately dismiss the position of the other. James Gee (1996) makes an intriguing argument along these lines in his volume on social linguistics and literacies, which is sub-titled "ideology in discourses." Gee points out that what he labels "Napoleon's move" was one of the great moments in the history of the term "ideology," a move that has become a classic rhetorical strategy for attacking views one does not like. Gee explains:

The Enlightenment philosophers had derived their views of what laws and governments ought to look like on the basis of a social theory of the mind, knowledge, and human beings. In attacking these philosophers, Napoleon used 'ideology' as a term of abuse for a social policy which was in part or in whole derived from a social theory in a conscious way. Napoleon disliked the Enlightenment philosophers' social theory and its conclusions because they conflicted with his interests and his pursuit of power. Rather than arguing against this theory by arguing for a rival theory of his own, he castigates it as abstract, impractical, and fanatical. In its place he substitutes, not another theory, but 'knowledge of the human heart and . . . the lessons of history' . . . which it just so happens Napoleon is in a position to know better than others and which just happens to support his policies. (p. 3)

As Gee points out, this move has been used ever since Napoleon to attack and dismiss social theories that conflict with one's own will to power and to suggest that one's opponent is an ideologue, operating within a closed system and unwilling to consider other points of view. Our analysis indicates that this strategy is evident in discussions—on both sides—of current policies related to teacher education.

We want to make it a point to note here that in our reading of the documents, the deregulationists are more likely to make Napoleon's move in their critiques of the professionalization agenda than vice versa. In our view, they are also more likely to be inflammatory in their remarks, casting aspersions not only on the positions they oppose but also on the professional integrity of their opponents. We believe this may be the case because the deregulation agenda for teacher education reform was presented oppositionally from the start, positioned to challenge the profes-

sionalization agenda and the likelihood that new professional "regulations" for teacher education would secure federal funds. In the written statements of the deregulationists, for example, a great deal of space is devoted to refuting the arguments of those who advocate professionalization relative to the space utilized to presenting the deregulation viewpoint. Despite these differences, however, debaters on both sides use Napoleon's move in order to cast their opponents' positions as ideological and their own as empirical.

Linda Darling-Hammond (2000a), for example, concludes that Ballou and Podgursky's "one-sided treatment of the Commission's proposals reflects the ideological lens they apply to their work" (p. 29). She comments on Ballou and Podgursky's critique of her use of NAEP data, which includes a discussion of whole language and phonics, with these words: "The teaching of reading should not be treated as an ideological question with one 'side' trying to debunk the other" (p. 41). And, finally, she attempts to capture the empirical warrant for her position by reiterating the veracity of her own analyses and dismissing the so-called empirical challenges Ballou and Podgursky pose by labeling them as political and ideological in the first place:

Charges of deliberate misrepresentation of data are very serious. Making such charges without ascertainment of sources and accurate rendering of claims may be acceptable in the political realm, but it violates the ethical norms of the research community. (p. 42)

On the other hand, in nearly all of their discussions of NCTAF's recommendations, Ballou and Podgursky assert that NCTAF's claims are ideologically rather than empirically driven. They are especially critical of the teaching methods taught in schools of education in the name of high standards, asserting that there is no knowledge base for pedagogical practice that is even remotely comparable to those of other professions, a situation that leads to large-scale practice based on poor ideas rather than evidence:

Poor ideas secure a following in part because the scientific foundation for pedagogical prescriptions is weak. However, ideology also plays a large role in shaping the views of educators, as shown by the influence of the constructivist theory of learning on the teaching practices endorsed by leading schools of education. . . . [T]eacher educators espouse pedagogical practices for ideological reasons rather than because the evidence indicates they best promote student learning. (Ballou & Podgursky, 1999, p. 40)

In statements like these intended to persuade the public (Thomas B. Fordham Foundation, 1999a, 1999b), the deregulationists repeatedly use Napoleon's move to dismiss the idea of professionalization.

One of the most provocative applications of Napoleon's move to dismiss a position *because* it was ideological occurred recently in an evaluation of teacher education programs in Colorado, as reported in the news media in the Denver area. As is true in many states across the country, Colorado has new and tighter regulations for teacher preparation, and all teacher education programs were required to be recertified by June, 2001, or else be shut down. Denver newspapers recently revealed that a report by the conservative "watchdog" organization, the National Association of Scholars (NAS), was commissioned by the Colorado Commission on



Higher Education to aid in these evaluations. The report's conclusions about teacher education at the University of Colorado at Boulder made headlines across the state. Note that Napoleon's move is front and center in this critique:

There are problems here that are so significant that a mere 'revision' is unlikely to correct them. Nothing short of a miraculous transformation can reverse the patently overt ideological proselytizing that goes on in the name of teacher education at CU [Boulder]. More than any other reviewed institution, CU's teacher education programs are the most politically correct and stridently committed to the social justice model. (Curtin, 2001)

The NAS report, authored by David Saxe, who was an original signer of the Fordham Foundation's manifesto, asserted explicitly that teacher education programs should be based on "objective" standards and "core knowledge" rather than on ideology. The Colorado brouhaha over this excoriating critique had partly to do with the fact that the existence of the NAS document was denied until newspapers uncovered it. Our point in this article, however, is that the critique used "ideology" as a damning pejorative in and of itself, in order to discredit the work of certain teacher education institutions and conclude that they should be shut down. The fact that David Saxe and other NAS members were signers of the Fordham's Foundation manifesto, which explicitly advocates deregulation in the first place, was not mentioned in newspaper accounts (Curtin, 2001; Langeland, 2001).

There is no question in the above examples that the evidentiary warrant is what is being contested. The battle is over which side will capture the right to be termed "empirical," while at the same time avoiding the deprecatory description, "ideological." As we have shown in some detail, the major players in the professionalization-deregulation debate jockey to establish the *evidentiary warrant* through three key strategies:

- providing convincing empirical evidence about the impact of teacher education,
- discrediting the evidence of the other side through methodological and/or logical critique of procedures for data collection and analysis,
- casting the other side as "simply" ideological and therefore readily able to be dismissed and/or ignored.

Interlocking with the evidentiary warrant is the *accountability warrant*, to which we turn in the next section.

### *The Accountability Warrant: Outcomes Versus Inputs*

We use the term *accountability warrant* to mean a set of "reasonable grounds" for action based on outcomes, results, and outputs. Accountability is surely one of the most used (and over-used) terms in public discussions about schools and schooling. In the media, in public policy debates, and within the profession of teaching/teacher education itself, there is unprecedented emphasis on accountability, responsibility, and even liability for outcomes. In fact, we have argued elsewhere (Cochran-Smith, 2001a, 2001b) that "the outcomes question in teacher education" is currently driving the field and is, to a great extent, influencing policy and practice. In this paper, we use *the accountability warrant* to refer to the arguments posed on both sides of the professionalization-deregulation debate in order to demonstrate that recommended policies are justifiable and justified by the outcomes and results they produce.

The outcomes emphasis of the deregulation agenda is most clear in "The Teachers We Need and How to Get More of Them," a major statement of the Thomas B. Fordham Foundation (1999a) presided over by Chester Finn and also connected to the Heritage Foundation, the Pioneer Institute, and the Manhattan Institute through interlocking boards of directors and senior associates. These groups are widely known for their government lobbies and their support of the privatization of education, including school reform strategies such as school choice, vouchers, and heavy reliance on high stakes testing for students and teachers. "The Teachers We Need" is the Fordham Foundation's "manifesto," a term used to announce explicitly a public statement of motives and goals. The document is signed by William Bennett, E.D. Hirsch, Diane Ravitch, James Peyser, and others, a veritable who's who of outspoken and conservative critics of education. The focus on accountability is crystal clear throughout:

The good news is that America is beginning to adopt a powerful, commonsensical strategy for school reform. It is the same approach that almost every successful modern enterprise has adopted to boost performance and productivity: set high standards for results to be achieved, identify clear indicators to measure progress towards those results, and be flexible and pluralistic about the means for reaching those results. This strategy in education is sometimes called 'standards-and-accountability'.

The bad news is that states and policy makers have turned away from this commonsensical approach when trying to increase the pool of well-qualified teachers. Instead of encouraging a results-oriented approach, many states and policy makers are demanding ever more regulation of inputs and processes. Other modern organizations have recognized that regulation of inputs and processes is ineffectual and often destructive. There is no reason to believe that it will be anything other than ineffectual as a strategy for addressing the teacher quality problem.

A better solution to the teacher quality problem is to simplify the entry and hiring process. Get rid of most hoops and hurdles. Instead of requiring a long list of courses and degrees, test future teachers for their knowledge and skills. Allow principals to hire the teachers they need. Focus *relentlessly on results*, on whether students are learning. (pp. 1–2, emphasis added)

In their manifesto, the Fordham Foundation does not simply "focus relentlessly" on results. It also focuses relentlessly on discrediting the concept of professionalization by suggesting that it does *not* focus on results, but instead emphasizes inputs, or what Fordham calls "hoops and hurdles" in the form of courses, degrees, and certification requirements to the exclusion of results and accountability. Positioning deregulation in opposition to professionalization vis-a-vis the outcomes issue is a repeated rhetorical move in Fordham Foundation and related documents, as this excerpt indicates:

Today, in response to widening concern about teacher quality, most states are tightening the regulatory vise, making it harder to enter teaching by piling on new requirements for certification. On the advice of some highly visible education groups such as the National Commission on Teaching and America's Future, these states are also attempting to 'professionalize' teacher preparation by raising admissions criteria for training programs and ensuring that these programs are all accredited by the National Council for the Ac-

creditation of Teacher Education (NCATE). That organization is currently toughening its own standards to make accredited programs longer, more demanding, and more focused on avant-garde education ideas and social and political concerns. (Thomas B. Fordham Foundation, 1999a, p. 4)

Contrary to the way they are characterized by the deregulationists, however, those who favor professionalization as a strategy for educational reform *do* claim to be concerned about accountability and outcomes. They take a very different tack, however, by defining outcomes in terms of quality of teaching, high standards for teacher development, and producing teachers who are able to teach so all students learn to high standards. This perspective is very clear in Gary Sykes's introduction to *Teaching as the Learning Profession: Handbook of Policy and Practice* (Darling-Hammond & Sykes, 1999), the chapters of which were solicited as background analyses for NCTAF's initial work. Sykes's introduction illustrates how proponents of professionalization construct the accountability warrant:

This book is based on a deceptively simple premise coupled with a hypothesis. The premise is that the improvement of American education relies centrally on the development of a highly qualified teacher workforce imbued with the knowledge, skills, and dispositions to encourage exceptional learning in all the nation's students. The related hypothesis is that the key to producing well-qualified teachers is to greatly enhance their professional learning across the continuum of a career in the classroom. We underline this hypothesis in the book's title. Teaching par excellence must become the learning profession in order to stimulate greater learning among students. (p. xv)

Interestingly those who advocate professionalization are making a claim for accountability that is not unlike the claim made by the deregulationists, at least not on the surface. For example, Arthur Wise and other NCATE representatives tout their new standards as squarely outcomes-based. In fact, in recent articles and symposia, NCATE 2000 standards were described as a "paradigm shift from inputs to outputs" (Imig et al., 2000), a "bold . . . and daring . . . plunge into the world of performance assessment and performance standards" (Schalock & Imig, 2000, p. 4), and a "major shift from curriculum-oriented standards to performance-based standards that focus on what teacher candidates know and are able to do" (Wise, 1999, p. 5).

NCATE's former standards were described by critics—especially the deregulationists—as merely "counting courses" or focusing on curriculum content instead of paying attention to results. Wise (1999) points out that NCATE's new system will require schools of education to provide performance evidence of candidate competence, including state licensing examination results as well as summarized and sampled performance evidence of candidates' knowledge and skill. The rationale for the first major section of the new NCATE standards, "Candidate Performance," makes this clear:

The public expects that teachers of their children have sufficient knowledge of content to help all students meet standards for P-12 education. The teaching profession itself believes that student learning is the goal of teaching. NCATE's Standard 1 reinforces the importance of this goal by requiring that teacher candidates know their content or subject matter, can teach, and can help all students

learn . . . Candidates for all professional education roles are expected to demonstrate positive effects on student learning. Teachers and teacher candidates should have student learning as the focus of their work. . . . Primary documentation for this standard will be candidates' performance data prepared for national and/or state review . . . [including] performance assessment data collected internally by the unit and external data such as results on state licensing tests and other assessments. (NCATE, 1999, pp. 7-9)

The new NCATE standards are in keeping with recent developments in specialized accreditation organizations more generally, where the emphasis has shifted from inputs to outcomes measures (Dill, 1998). As Murray (2000) and others have pointed out, this is part of a larger trend in higher education, what Graham, Lyman, and Trow (1995) refer to as an "increasing clamor to apply quantitative measures of academic outcomes to guarantee educational quality for consumers" (p. 7).

It is not surprising that proponents of both deregulation and professionalization are preoccupied with outcomes. This is a seductive idea that has captured public sentiment, and politicians have seized on it in election after election. The power of the outcomes idea, of course, is its "common sense." Who would deny that the public has a right to expect clear connections and links among how teachers are prepared, how teachers teach, and what students learn? Closer examination of the discourse, however, reveals that although parties on both sides of the debate use the language of outcomes and results to establish the accountability warrant, they actually mean quite different things by these words.

Spokespersons for the deregulation agenda mean "outcomes" in a narrow sense: students' scores on mandatory high-stakes standardized tests. In their published materials, they frequently refer to value-added assessments, such as the Tennessee Value-Added Assessment System (Sanders & Horn, 1994, 1998), because they allow for the direct incorporation of outcomes data (student achievement test scores) into evaluations of individual teachers and schools. The deregulationists' single-minded focus on results is crystal clear in Marci Kanstoroom's (1999) testimony to the U.S. House of Representatives Subcommittee on Postsecondary Education. In this testimony, Kanstoroom, Research Director at the Fordham Foundation and Research Fellow at the Manhattan Institute, makes the outcomes point at the same time that she discredits the "inputs" focus of professionalization:

[F]ocusing on retooling existing teachers through professional development is itself an inadequate strategy for addressing the teacher quality problem. So too is focusing on pre-service training of future teachers in colleges of education. . . . Increasing training in schools of education and professional development workshops . . . [is] unlikely to make much of a dent in today's dual crisis of teacher quality and quantity.

What principles might guide the Congress in seeking to ensure that every child in America has outstanding teachers? Start by focusing on the one vital result, student achievement. Insist that anything you do for teachers have a payoff in student learning, and insist that states focus their teacher quality policies on this as well, at least insofar as federal dollars are involved.

Your most valuable role in this ESEA cycle might well be to foster an atmosphere of responsible experimentation while insisting

that everything supported with federal funds be judged by evidence that it yields higher pupil achievement. (pp. 1–2)

Likewise, in a critique of the work of the NBPTS, Wilcox and Finn (1999) zero in on results of standardized tests and at the same time discredit teachers' learning as an outcome worthy of attention:

The [NBPTS] professional teaching standards are, at bottom, unconnected to hard evidence that they correlate with successful teaching. The Board's enchantment with today's regnant educational orthodoxies has left it with vague, therapeutic standards and a subjective assessment process that do not inspire confidence in its imprimatur.

Board certification focuses on input measures that are inconsistent with [states'] emphases on student and school results . . . teachers whose students show the most improvement on the test should be the ones rewarded, not the National Board certified teachers since there is no evidence that their students do better academically. The Board has made little effort to link its credentialing process to gains in pupil achievement—the holy grail of educational reform. (pp. 181, 188)

Language like “the holy grail” of educational reform and a “relentless focus on results” is intended to signal to the public and to policy makers that the deregulation agenda is a “get tough” approach based on measurable outcomes that are clear and precise while the professionalization agenda is soft and subjective. Although deregulationists are interested in accountability systems that are more complex than mere test scores, these are clearly the linchpin in such systems: “The proper incentives are created by results-based accountability systems in which states independently measure student achievement, issue public report cards on schools, reward successful schools, and intervene in or use sanctions against failing schools” (Thomas B. Fordham Foundation, 1999, p. 8).

As we have mentioned above, however, it is important to note that spokespersons for the professionalization approach to educational reform *do* emphasize outcomes. Their notion of outcomes, however, stands in stark opposition to the test-score approach of the deregulationists. From the perspective of professionalization, outcomes are defined primarily in terms of teachers' professional performance, including the alignment of teaching practice with curriculum standards, with teachers' ability to have a positive impact on students' learning, and with teachers' skill at reflecting on and learning from their own work. Constructing teacher education outcomes in terms of the professional performances of teachers and teacher candidates begins with the highly-contested premise that there *is* a knowledge base in teaching and teacher education based on rigorous research and professional consensus about what it is that teachers and teacher candidates should know and be able to do (Yinger, 1999). The notion of professional performance as outcome is a central facet of partnerships among accrediting, licensing, and certification agencies across states and the nation (Wise, 1996). Performance as outcome is also behind the move in some states to require teacher education institutions to seek national certification and/or certification by new state level professional practices boards.

The notion of professional performance as outcome is particularly clear in “NCATE, INTASC, and National Board Standards,”

one of the appendices of *Doing What Matters Most*, NCTAF's (1997) second report:

Until recently, teaching has not had a coherent set of standards created by the profession to guide education, entry into the field, and ongoing practice. In the last ten years, such standards have been created by three bodies working together to improve teaching. . . . These standards are aligned with one another and with new standards for student learning in the disciplines, and they are tied to performance-based assessments of teacher knowledge and skill. The assessments look at evidence of teaching ability (videotapes of teaching, lesson plans, student work, analyses of curriculum) in the context of real teaching. States are just beginning to incorporate these standards into their policies governing teaching. (p. 63)

All three sets of standards (NCATE, INTASC, and NBPTS) stress the idea that teachers must have knowledge of subject matter as well as pedagogy and also be able to teach so that all children can achieve high learning standards in all the subject areas. Although the latter is consistent with the outcomes focus of the deregulationists, advocates of professionalization also stress the importance of teachers' working with diverse learners, meeting the special learning needs of students, providing positive learning environments, collaborating with parents and colleagues, thinking systematically and critically about practice, and functioning as members of learning communities. This accountability warrant is based on outcomes defined in part as professional performance, which is very different from the bottom-line approach of the deregulationists who see the production of “well-prepared” teachers as an intermediate outcome at best, not important in and of itself, but only if it functions as a means to produce student performance outcomes. Those who advocate the professionalization agenda oppose high stakes tests as the sole measure of learning. Instead, they focus on relationships between student learning and teacher learning, with outcomes defined as teaching performance that supports student learning (Darling-Hammond & McLaughlin, 1999).

As we have said, part of the way both deregulationists and advocates of professionalization construct the accountability warrant is to discredit the approach of the other side. In her debate with Chester Finn, for example, Linda Darling-Hammond (ECS, 2000) comments explicitly on why the deregulationist approach—with accountability defined solely in terms of student test scores and after the fact (i.e., firing ineffective teachers who don't boost test scores)—is simply untenable, while, from her perspective, the approach of the NCTAF is actually more directly focused on accountability:

[NCTAF] aims at professional accountability—trying to figure out how to hold the system and teachers accountable for getting and using knowledge about what works. . . . The Fordham approach . . . doesn't have a strategy for dealing with the big misassignment problems that occur across the country. The Fordham approach also relies on people's good instincts about teaching and looks for evidence of quality based on student test score gains after hiring. . . . There is the idea of just leaving it up to school districts who the best-qualified candidates are. . . . The other issue is that poor and minority children get the least qualified teachers in virtually every context.

These excerpts suggest that proponents of professionalization construct accountability as quality of teaching, teacher qualifications, and systematic teacher development in line with high

standards for curriculum and pedagogy reached through research and professional consensus. Such well-qualified and developed teachers are to be available to *all* students including those who attend the most poor and neglected schools.

The examples in the preceding section make it clear that the accountability warrant is highly contested. The battle is over which side gets to call itself the most accountable, reasonable, and attentive to responsible outcomes. A close look at the discourse reveals that the rhetorical strategies employed in the debate about accountability—on both sides—are similar to those used in debating the evidence:

- using the language of outcomes, results, responsibility, and accountability (even though defined differently),
- suggesting that the other side is really *not* about outcomes but is instead *either* about inputs (the deregulationists' characterization of the professionalization agenda) *or* about outcomes defined so narrowly that they are dysfunctional (the profession's characterization of the deregulation agenda),
- casting the other negatively, *either* as favoring rigidity, lock-step procedures, and standardization (the deregulationists' characterization of professionalization) *or* favoring loopholes and leaving good teaching to chance rather than to professional knowledge and qualifications (the profession's characterization of deregulation).

The *political warrant*, which we describe next, interacts and in a sense interlocks with both the *evidentiary warrant* and the *accountability warrant*.

### *The Political Warrant: Public Good Versus Private Good*

In this article, we use the term, *political warrant*, to refer to the ways proponents of competing policies in teacher education justify their positions in terms of service to the citizenry and of larger conceptions about the purposes of schools and schooling in modern American society. Once again what is most intriguing here is that proponents of both deregulation and professionalization use some of the same language and, at least on the surface, claim some of the same things. They argue, assert, and endeavor to persuade others that they are in favor of an inclusive agenda intended to promote a civil society and serve the good of the public *writ large*. At the same time, they discredit their opponents because they advocate a private agenda for the good of a privileged few. Of course the way in which the two sides construe “public good” and “private good” is diametrically opposed.

The “public good” emphasis of the deregulationists is clear in Chester Finn's comments in the Finn–Darling–Hammond (ECS, 2000) debate:

[A] better way to get good teachers . . . is in fact to open the doors and welcome lots more people into American public schools through lots more pathways. . . . I think what this subject [quality teaching] needs today, and some of you may think this uncharacteristic of me, is humility, open-mindedness, pluralism, and experimentalism. . . . This is not an undertaking that is ripe for dogmatism, certainty, monopoly, or ‘one size fits all’ policies. . . . This is a plea for freedom, devolution, pluralism, and diversity, all centered on the concept of school accountability.

This last comment makes it clear how the political warrant—with its highly evocative language of freedom, pluralism, and open-mindedness—is linked rhetorically to the accountability

warrant with its emphasis on the bottom line of students' test scores. The Fordham Foundation's manifesto (1999a) is even clearer on this point:

The teaching profession should be deregulated. Entry into it should be widened, and personnel decisions should be decentralized to the school level, the teachers' actual workplace. Freeing up those decisions only makes sense, however[,] when schools are held accountable for their performance. . . . In private schools today—and in most charter school programs—schools are held accountable by the marketplace while hiring decisions are made at the building level. Public schools, too, should be accountable in this manner.

For principals (or other education leaders) to manage their personnel in such a way as to shoulder accountability for school results, but not only be free to select from a wide range of candidates, they must also have the flexibility to compensate those they hire according to marketplace conditions (and individual performance), and they must be able to remove those who do not produce satisfactory results. (pp. 8–9)

The argument is basically this: In order to improve teaching and quality of life for the public *writ large*, what schools need more than anything else is the freedom and flexibility to open their doors and thus recruit, hire, and keep all teachers who can “up” students' test scores regardless of their credentials (or lack thereof). From this perspective, the “free market” represents the ultimate “freedom” for American society. Choice, flexibility, pluralism, innovation, and experimentation are the results of educational reform when market forces are allowed to prevail. Charter schools and private schools are the exemplars for reform in public schools. This rhetoric of the deregulationists is intended to persuade the public that disciplining teacher education (and schooling in general) according to the forces of the free market is the best way to serve the American citizenry and produce the greatest good for a civil society, including the production of better teachers.

What is also clear in the public discourse of the deregulationists is their simultaneous effort to construct proponents of the professionalization agenda as members of a private club. In Wilcox's critique of the National Board (Wilcox & Finn, 1999), for example, as in other Fordham Foundation documents that begin with background information about the NCTAF and its affiliates, the point is repeatedly made that NCTAF was funded by the Carnegie Corporation, the Dewitt Wallace Reader's Digest Fund, the Ford Foundation, and the Pew Charitable Trusts, all private foundations. Ballou and Podgursky consistently characterize the commission as a “private body” with representatives from “various educational interest groups” (including the AFT, NEA, NCATE, and others), all of whom they paint with the same brush: “Regulatory authority empowers these organizations to act in ways that serve private rather than public interests, a significant public policy problem that students of regulation have long recognized” (Ballou & Podgursky, 2000, p. 7). Professionalization is portrayed as an ill-advised narrow approach to educational reform, designed to provide tighter “vice-like” controls that limit and “yoke” individual school leaders who, if freed up, could use their best innovative strategies and approaches to reach high learning standards for all students.

Another strategy of the deregulationists is to portray proponents of professionalization as motivated by private interests out of touch and out of sync with the views of “the public.” A dramatic example is found in The Public Agenda’s *Different Drummers: How Teachers of Teachers View Public Education* (Farkas & Johnson, 1997), a survey of some 900 professors of education. Although the Public Agenda is described as a “nonpartisan public opinion research and citizens’ education organization” (Public Agenda, 2001), the preparation and publication of *Different Drummers* was in fact funded by the Fordham Foundation. The report finds that teacher educators have an enduring commitment to public education as an “almost sacred democratic institution” (Farkas & Johnson, 1997, p. 24) intended to meet the needs of an increasingly diverse population and necessary for civic participation in a democratic society. The report concludes that teacher education professors have a liberal education agenda that de-emphasizes teaching as the direct transmission of knowledge, de-emphasizes the “canon” of western knowledge, and de-emphasizes memorization and right answers. Instead, the report finds that teacher educators believe that enabling all students to be “life-long learners” is the “absolutely essential” (p. 9) goal of teacher education. They question standardized tests as the conclusive indicator of achievement, place a low priority on order and discipline, and want prospective teachers to foster communities of learners where diverse groups of students explore questions rather than reproduce rote information.

Teacher educators’ vision of education, the Public Agenda report concludes, is fundamentally out of touch with the views of “the public” and of “public school teachers” whose priorities are discipline and order, punctuality and politeness, and learning basic factual material within a well-managed environment. In short, the report suggests that teacher educators are “idealists” who pay scant attention to the agenda of “real” parents and “real” teachers. What is perhaps even worse, the report suggests, is that teacher educators stand by their commitment to public education even in the face of their own admitted uncertainty about how to remedy the situation.

Sandra Stotsky, a Fordham Foundation standards reviewer as well as an original signatory of its manifesto, is the author of  *Losing Our Language: How Multicultural Classroom Instruction Is Undermining Our Children’s Ability to Read, Write, and Reason* (1999), a book with themes similar to those mentioned above. In it, Stotsky asserts that elementary school instructional reading materials have been drastically altered over the last thirty years as part of “an approach to curriculum development called multiculturalism,” which, she claims, has “a clear race-based political agenda, one that is anti-civic and anti-Western in its orientation” (p. 7). Stotsky suggests that although inclusion and diversity are the goals that advocates of multicultural education present publicly, their more subtle and insidious agenda is anti-White, anti-capitalistic, and anti-intellectual:

Schools of education loudly broadcast to their students a definition of diversity that excludes European ethnic groups, a new purpose for a multicultural education, and the reasons why this purpose should guide the shape and content of the curriculum. (p. 9)

Stotsky concludes that teacher education is a “progressive” force that is harming the interests of the public and ultimately undermining students’ achievement.

Like the deregulationists, proponents of the professionalization agenda also construct *the political warrant* in terms of the public good and greater service to all members of the citizenry. The surface similarity of their terms, however, is the only similarity along these lines. The fundamental position of professionalization is that every child in America ought to have a well-qualified, fully prepared, and committed teacher. This approach, which stands in stark contrast to the approach of the deregulationists, is crystal clear in all of NCTAF’s major documents, including *What Matters Most: Teaching for America’s Future* (1996):

This report offers what we believe is the single most important strategy for achieving America’s educational goals: A blueprint for recruiting, preparing, and supporting excellent teachers in all of America’s schools . . . A caring, competent, and qualified teacher for every child is the most important ingredient in education reform and, we believe, the most frequently overlooked. (p. 3)

Tens of thousands of people not educated for these demands have been unable to make a successful transition into the new economy. A growing underclass and a threatened middle class include disadvantaged young people who live in high-poverty communities as well as working-class youth and adults whose levels of education and skills were sufficient for the jobs of the past but not for those of today and tomorrow. Those who succeed and those who fail are increasingly divided by their opportunities to learn. . . .

In this knowledge-based society, the United States urgently needs to reaffirm a consensus about the role and purposes of public education in a democracy—and the prime importance of learning in meeting those purposes. The challenge extends far beyond preparing students for the world of work. It includes building an American future that is just and humane as well as productive, that is as socially vibrant and civil in its pluralism as it is competitive. . . . [T]he central concepts that define America, ideas about justice, tolerance, and opportunity are being battered. We must reclaim the soul of America. (p. 11)

These excerpts from the NCTAF report illustrate how the political warrant—with, once again, the highly-evocative language of justice, freedom, pluralism, civility—is linked rhetorically to the accountability warrant with its bottom line of teachers who know how to teach so that everybody learns. NCTAF’s executive summary (1996) carries the now very familiar and often quoted lines that link the two:

We propose an audacious goal for America’s future. Within a decade—by the year 2006—we will provide every student in America with what should be his or her educational birthright: access to competent, caring, qualified teaching in schools organized for success. This is a challenging goal to put before the nation and its educational leaders. But if the goal is challenging and requires unprecedented effort, it does not require unprecedented new theory. Common sense suffices: American students are entitled to teachers who know their subjects, understand their students and what they need, and have developed the skills required to make learning come alive. (p. vi)

The argument of those who advocate professionalization is basically this: In order to improve the quality of life and economic opportunity for the public *writ large*, schools need, more than anything else, teachers who are fully qualified and know how to teach all students in this increasingly diverse society. From this

perspective, equal access to good teachers with rich opportunities to learn for all students represents the true path to a citizenry educated for democracy in American society.

It is also part of the rhetoric of professionalization to point out that the deregulation agenda is far removed from the best interests of the public in a democratic society. In the debate with Finn, Darling-Hammond (ECS, 2000) pointed out more than once that the market approach of the Fordham Foundation did not address the realities of hiring practices in school systems with large populations of poor and minority children:

Poor and minority children get the least qualified teachers in virtually every context across states and across districts. You can see that in California . . . where the Fordham Foundation experiment is already being enacted. High-minority schools are nine or ten times more likely to have unqualified teachers than low-minority schools. High-poverty schools are several times more likely to have unqualified teachers. So when the market operates, it does not always operate to provide all children with the best-qualified teachers.

This position is stated more fully in Darling-Hammond's (2000c) summation of NCTAF and its status several years after the initial report:

It is perhaps a testament to the power of the commission's agenda and the constituencies it has mobilized that a well-funded, right-wing backlash has formed against the commission, against university-based teacher education, and against national standards for teacher licensing, certification, and accreditation. (pp. 172–173)

Advocates for a free-market approach to teacher hiring and teacher education ignore the extensive evidence demonstrating the significant effects of teacher education and certification on student learning . . . Unfortunately, all the evidence that currently exists suggests that the end result of their arguments will be the continuation of the grossly unequal system we currently operate, in which the profession has few means for infusing knowledge into preparation and training; meanwhile the schools that serve the most advantaged students insist on well-trained teachers, whereas those that serve poor and minority students get what is left over from a system that has no engine for quality and no basis for distributing it equitably. (p. 176)

This statement provides a telling overview of how proponents of professionalization interlock the three warrants to make their case for educational reform.

Penelope Earley, Vice President of the American Association for Colleges for Teacher Education (AACTE) and David Labaree, Professor of Teacher Education at Michigan State University, each point out that a market approach fundamentally misunderstands the nature of teachers' work, which they characterize as primarily a public enterprise for the common good, in contrast with market approaches to educational reform, which they suggest are about individual competition for what Labaree (1997) calls "private goods." Earley (2000) points to some of the basic contradictions implicit in the 1998 Higher Education Act as evidence of the mismatch between teachers' work, which she characterizes as fundamentally democratic, and market-driven reforms, which she sees as fundamentally competitive and individualistic:

A market policy lens is based on competition, choice, winners and losers, and finding culprits. Yet teachers must assume that all children can learn, so there cannot be winners and losers. Market poli-

cies applied to public education are at odds with collaboration and cooperative approaches to teaching and learning. . . . Paradoxically the Higher Education Act Title II categorical programs encourage institutions of higher education to form collaborative partnerships across academic disciplines and with K–12 schools for the purpose of preparing new teachers and offering professional development for career educators. However, under the market approach being used in educational policy and reflected in the accountability sections of the same law, teachers and those who design and administer their preparation programs must have as a primary concern competition, being a winner, not a loser, and certainly not being cast as a culprit. The consequence of these pressures is the domestication of teachers,<sup>5</sup> perpetuating their role as semiskilled workers . . . and frustrating efforts for teaching to be truly professional work. (pp. 36–37)

Proponents of professionalization suggest that market approaches to education reform legitimize the dominance of "private goods" and undermine the view that public education is an enterprise for the public good in a democratic society.

The excerpts we have used above make it clear that *the political warrant* is a contested issue. The contest is fundamentally about which side gets to claim that it is most committed to the public good and to the fundamental premises upon which American society was founded. Again, the rhetorical strategies are similar to those used to establish the first two warrants:

- using the language of public interest, civil society, pluralism, and freedom,
- suggesting that the other side is really not about the public good, but is instead about its own private agenda,
- casting the other side negatively, *either* favoring regulatory strategies that protect private monopolies (the deregulationists' characterization of the professional agenda) *or* favoring status-quo strategies that protect the already advantaged and deny educational opportunities to poor and minority communities (the professionalists' characterization of deregulation).

### Conclusion: The High Ground of Common Sense

In a recent historical sketch of performance assessment, Madaus and O'Dwyer (1999) suggest that today's emphasis on performance assessment in K–12 education is part of a larger change in educational measurement that has "captured the linguistic high ground, just as the term 'minimum competency testing' did in the 1970s" (p. 688). In the conclusion of this article, we want to suggest that taken together, the three warrants we have been describing—the *evidentiary warrant*, the *accountability warrant*, and the *political warrant*—are being used by advocates of opposing agendas to try to capture "the linguistic high ground" of common sense about reforming teacher education and improving teacher quality. In other words, given the way each has constructed "the problem" of teacher education, each side is attempting to persuade others that the "solution" is obvious and logical, based on simple common sense and clearly intended for the common good of the public and of American society.

It is not at all surprising that this rhetorical strategy is used on both sides of the debate, even though the solutions advocated—either to deregulate teacher education, on one side, or to professionalize teaching and teacher education, on the other—are diametrically opposed. It is only common sense, after all, to want educational policies based on empirical evidence and facts rather

than “ideology” in Napoleon’s sense of a closed system of ideas put forward by ideologues who are preoccupied with idle theory rather than with data and real experience. Along these same lines, it is only common sense to want state and federal policies regarding teacher quality and teacher education that require educators to be accountable for students’ learning and be responsible for their own actions rather than permitting them to be romantic about ideas that don’t really work or ignorant of the fact that narrow ideas are actually dysfunctional in the real world. And finally, it is only common sense—not to mention patriotic and true to the American spirit—to want reform policies that are devoted to taking care of the people and of the public good *writ large* in our society, rather than dedicated to the private interests of a certain privileged few.

One problem with the “high ground” of common sense is that it sometimes obscures the lower ground all around it, not to mention hiding what is underneath the visible surfaces or only partially exposed in the high ground itself. This makes it difficult to sort out rhetorical moves from substantive arguments and political maneuvering from innovative policies and practices. When advocates of two very different agendas each stake out the high ground, it is doubly difficult to remember also that the warrants each side uses to make its case are tied to their positions within institutional structures and connected in complicated ways to larger viewpoints on society and social relationships within society, viewpoints that go well beyond schools and schooling.

It is also not surprising that it is the evidentiary warrant that has most captured the interest of academics and other researchers, some of whom have been perplexed and troubled by the publication and announcement of opposing conclusions about the empirical evidence concerning the impact on teacher quality of various strategies for educational reform. Along these lines, there are a number of initiatives sponsored by organizations such as AERA, OERI, ETS, NRC, and the Carnegie Foundation for the Advancement of Teaching<sup>6</sup> that have recently been completed or are currently underway. Although they come at the task from different perspectives and with different audiences and purposes, each of these is intended to sort out some of the competing claims about teacher education and teacher quality and to establish rigorous and objective analyses of various bodies of evidence in these areas. We see these initiatives as important, and we ourselves are involved in some of these. We also believe, however, that it is imperative that the participants in these initiatives sort out the various political and accountability warrants that are implicit in and related to the evidentiary warrants they seek to establish. This includes being explicit about the assumptions and motivations that underlie the establishment of different initiatives in the first place as well as the values and political purposes attached to them.

In conclusion, then, we would caution that the most important open questions about how best to reform teacher education and provide quality teachers for America’s schools will not be resolved solely by evaluating the evidentiary warrant. Rather, we would argue here that the accountability warrant and the political warrant must also be considered as well as how these two are braided together with one another and with the evidentiary warrant. Earley (2000) has commented on the value-laden nature of educational research and its easy use by policy makers to further

their own, sometimes quite different agendas. She suggests that “data and evidence used in the policy process will have several levels of bias: that embedded in the data or evidence itself, bias associated with analysis, and the biases of those in the policy world who use the information” (p. 35). And we ourselves have argued elsewhere (Cochran-Smith, 2001b) that the way “the problem of teacher education” is conceptualized in the first place has a great deal to do with the conclusions that are drawn about the empirical evidence suggesting what policies are the best solutions for reforming teacher education.

Thus we close this article with the same caution with which we began. Unless underlying ideals, ideologies, and values are debated along with and in relation to “the evidence” about teacher quality, and unless we examine the discourse of teacher education policy reform, we will make little progress in understanding the politics of teacher education and the nuances and complexities of the various reform agendas that are currently in competition with one another.

## NOTES

<sup>1</sup> It is not our intention to bolster unnecessary dichotomies between these two agendas. Along these lines, the Education Commission of the States (ECS, 2000) has published a side-by-side analysis of the arguments of Chester Finn and Linda Darling-Hammond based on their recent debate about reforming teacher education in order to demonstrate that some of their positions are indeed more similar than might be expected. We see the wisdom in cautions against dichotomous thinking (Shulman, 1988) and in the conciliatory efforts of ECS. However, since so much of the debate about teacher education is constructed—and interpreted by others—in terms that are oppositional, we believe it is important to unpack the assumptions and values in which the opposition is grounded.

<sup>2</sup> Along these lines, we do not pretend that our own stance about teacher education reform is neutral or a-political. As teacher education scholars and practitioners, we have long been involved in efforts to prepare new and experienced teachers to educate an increasingly diverse population and respond to the changing economic, social, and political contexts of our time. However, the analysis we offer here is intended to be as even-handed as possible, unpacking some of the important values and politics underlying the arguments for both professionalization and deregulation.

<sup>3</sup> Other documents were consulted but in the interest of space are not listed in Table 1 (e.g., Darling-Hammond, 2000d; Darling-Hammond et al., 1999).

<sup>4</sup> Gary Natriello, Editor of *Teachers College Record*, has provided a very helpful set of links on the web-based version of the journal that allows readers to move directly to the empirical studies about which the two sides disagree.

<sup>5</sup> Earley attributes this phrase to Diane Waff, a teacher in the School District of Philadelphia.

<sup>6</sup> It is not within the scope of this article to describe these projects here, although some information about them is contained in news bulletins and reports from AACTE, ATE, AERA, ETS, and OERI, in recent or forthcoming presentations at AERA’s and AACTE’s annual meetings, and in a brief editorial by Cochran-Smith (in press).

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## **Diane Ravitch, Ph.D.—A Brief History of Teacher Professionalism**

### **White House Conference on Preparing Tomorrow's Teachers**

Our nation faces a daunting challenge in making sure that we have a sufficient supply of well-educated, well-prepared teachers for our children. There is surely widespread agreement that good teachers are vital to our future. However, there is not widespread agreement about how we accomplish this goal. Some propose that we raise standards for entry into the teaching profession, while others suggest that we lower unnecessary barriers.

The answer in this debate quite clearly lies with an assessment of whether we are talking about the kind of standards that will produce more effective teachers or about the barriers that are simply hoops and hurdles intended to screen people out of the profession who have not taken courses or degrees that have no relationship to being a good teacher.

We know we have some serious problems. But we don't have a widespread certification problem. According to Department of Education data, more than 90% of our teachers have regular certification, and in some regions, it is over 95%. We don't have a problem of teachers lacking degrees. Teachers today have more degrees than ever in our history; the bachelor's degree is ubiquitous, and about half even have a master's degree. We do, however, have a problem in the academic preparation of teachers: only a minority-39%--have a bachelors or graduate degree in ANY academic field. The majority of teachers today have a degree in education, and many have both a B.A. and an M.A. in pedagogy.

At a time when our students are expected to meet high standards in English, mathematics, science, and history, there is a mismatch between teachers' academic preparation and the increasingly rigorous demands of the classroom.

To shed light on these issues, I would like to review briefly the history of the teaching profession and try to identify some critical points.

In the first half of the nineteenth century, the requirements for entry into teaching were modest: new teachers had to persuade a local school board of their moral character, and in some districts, pass a test of their general knowledge. In 1834, Pennsylvania became the first state to require future teachers to pass a test of reading, writing, and arithmetic. By 1867, most states required teachers to pass a locally administered test to get a state certificate, which usually included not only the basic skills, but also U.S. history, geography, spelling, and grammar.

During the nineteenth century, different states adopted different approaches to training future teachers. In some, like New York, the state subsidized private academies to prepare teachers for its schools. Massachusetts supported "normal schools" for teacher training, which offered short courses in educational methods, mainly for elementary teachers. In western states, normal schools offered longer

courses, both academic and professional, which prepared future teachers and administrators. In rural areas, local school boards ran teacher institutes, where their teachers could brush up on academic and pedagogical subjects. Some large school districts, like New York City, organized their own teacher training programs, led by experienced teachers, well into the 1930s.

Teacher certification in the nineteenth century was irregular and diverse. There was no single pattern, and there was no teaching profession as such.

This changed, however, at the beginning of the twentieth century.

The turn of the century was a time in which relatively small departments of pedagogy expanded into undergraduate and graduate schools of education. These institutions developed numerous specializations, such as school administration, educational psychology, educational sociology, and curriculum. Experts and professionals sought to create an education profession, which had its own preparation programs and its own technical language.

Some of the graduate schools of education got out of the business of teacher training altogether, becoming instead the gatekeepers for the profession's leadership. David Angus, the late professor of history of education at the University of Michigan, wrote an important monograph about this history, titled "Professionalism and the Public Good," which he prepared for the Thomas B. Fordham Foundation. The creation of graduate schools of education, he said, created a division between the leadership of the profession and classroom teachers. Furthermore, as he and other historians of education have noted, it also contributed to a parting of the ways between professors of pedagogy and liberal arts faculty and the college presidents who had taken a leading role in education reform during the nineteenth century; after about 1915, most school reform activities were led by educationists, and the participation of subject-matter professors and college presidents diminished.

After Teachers College was created in the late nineteenth century, it was often said that 120th street, which separates Teachers College from the rest of Columbia University, is "the widest street in the world." The price of professionalism unfortunately was the split between pedagogy and the traditional disciplines of the liberal arts and sciences.

The new leaders of the profession took charge of teacher certification. Certification became, increasingly, dependent on taking courses in pedagogy and in passing tests of pedagogical theory. State education departments and the colleges of education agreed that longer periods of formal training in pedagogy were required for future professionals of education. Teacher certification eventually came to be identified with the completion of teacher education programs rather than with the receipt of local certificates or the passing of subject-matter examinations. Not all future teachers majored in pedagogy; some continued to major in history, English, mathematics, and science, and to take pedagogical courses as a minor.

Educational leaders wanted education to be recognized as a profession, just as law and medicine were.

In law and medicine, there were specialized schools for graduate study; in law and medicine, the profession controlled entry to its ranks, rather than submit to control by uninformed laymen; in law and medicine, there was state regulation of the profession, developed in conjunction with leaders of the profession.

But the analogy between these fields failed because law and medicine had certain qualities that education lacked.

First, both law and medicine have a specific body of knowledge that the future member of the profession is required to learn; this body of knowledge has a significant, common, well-defined core of studies, covering commonly agreed upon knowledge and skills, that would be found in any reputable professional school. There is persuasive evidence that those who have this knowledge are more effective than those who lack it. This was not the case in education, where leading university schools of education committed themselves to an unending campaign for reform, without bothering to establish canons of knowledge about subject matter and about effective practice to guide future teachers.

Second, both law and medicine have well established, research-based standards and procedures. In law, there is a body of case law and commonly accepted procedures that future lawyers must master. In medicine, there are standard tests, standard diagnoses, and standard treatments for known ailments that future doctors must master. This is not the case in education, where pedagogues have debated what to teach, how to teach, how to test, whether to test, and which research methods are acceptable. Because of this lack of consensus on even the most elementary procedures, teachers have received a constant din of conflicting signals from the leaders of the field. In the past, dubious research findings grounded more in ideology than in data were given credibility by pedagogical leaders.

For example, in the early twentieth century, educational researchers agreed that there were immutable laws of learning, but a generation later these "laws" had been forgotten. In the 1920s and 1930s, intelligence testing was all the rage among the nation's education psychologists. In the 1920s, reading researchers advised teachers that children should avoid oral reading, and they advised parents not to read to their children, on the grounds that children were supposed to read with their eyes, not their ears. In the 1930s, reading researchers in schools of education shared a consensus against phonetic instruction, because they believed that children should learn to read whole words, not letters or sounds. This approach led to a debate that burdened reading teachers for the rest of the century. Only now is that debate finally ending, building on the work of Harvard professor Jeanne Chall in the late 1960s and culminating recently in the studies funded by the National Institutes of Health.

A third difference between law and medicine, on the one hand, and education on the other, is that graduates of law and medical schools have always known that they must pass an external examination in order to be licensed in their field. In education, however, the leaders of education programs sought to eliminate external examinations and to replace them with their own credentials. When the American Council on Education established a National Teachers' Examination in the 1930s, spokesmen from the nation's schools of education vociferously attacked it. The exams tested subject matter mastery. They

were offered a few times and seemed to be very popular with urban school districts. Unfortunately, with the outbreak of World War II, there was a severe national teacher shortage; school superintendents hired anyone they could get and lost interest in the Council's external subject-matter examinations. A fourth and perhaps most important difference between education and medicine is that advances in medical sciences have clearly resulted in better health for the American people. Doctors must keep abreast of the latest research so that they can diagnose diseases quickly and accurately, and so that they can advise their patients about how to maintain good health. Whereas medical professionals know that they must keep abreast of the latest medical research, education professionals feel no such need to know the latest education research.

If we learn from history, we will recognize that education cannot become a respected and durable profession until it establishes its practices on a solid foundation of valid research. We must insist on better evidence, more randomized trials, and replicable studies. Education will not achieve the status that it deserves until there is carefully constructed, validated knowledge about how to improve student learning, as well as how to measure student learning. Our universities must dissolve the historic gulf between schools of pedagogy and faculties in the arts and sciences so that those who teach are not only well-trained but truly well-educated.

This page last modified—March 7 [2002] (pjk)

## **Scientifically Based Research**

Stephen Raudenbush, University of Michigan

In May of 1999, the American Academy of Arts and Sciences hosted a conference on ways to improve the scientific quality of educational research. Among the organizers were two men who had played a central role in a similar project 40 years ago. Howard Hyatt and Frederick Mosteller's concern in the 1950s and 1960s was not the quality of research in education but rather the quality of research in medicine.

Hyatt and Mosteller argued in those days that carefully controlled clinical trials ought to become the norm for deciding which new vaccines, new surgical procedures, and new medications should be widely prescribed.

Their arguments met considerable skepticism. Hyatt told a story about a widely publicized debate between him and a heart surgeon. The question was whether it was ethical and feasible to conduct experiments in which heart patients would be assigned to a new surgical procedure versus a standard medical treatment. The heart surgeon asked: "Sir, have you ever held the beating heart of a human being in your hand?" The surgeon argued that the cold logic of science should not replace the clinical judgement of the seasoned practitioner.

In response, Hyatt and Mosteller noted that, in many cases, the profession really doesn't know what the best treatment is for a given disease. In that situation, it is unethical for us NOT to use the best available scientific methods, including experiments, to find out what works best. Once we know how best to deal with a given disease, many will benefit, revealing the true ethical character of the decision to conduct experiments.

Over the past 40 years, Hyatt and Mosteller's point of view has largely won out in the field of medicine. We now accept and admire the commitment of medical professionals to base their diagnoses and prescriptions on clinical trials in which patients are randomly assigned to alternative treatments.

The parallels between the debate in medicine then and the debate in education now are striking. At a recent conference, I recommended that our best ideas about how to improve teaching ought to be tested scientifically. A well-known educational researcher accused me of totalitarian thinking that unethically denies parents and teachers their rights.

People hold strong opinions about many important questions in education:

- Would a structured academic curriculum improve the pre-literacy skills of preschoolers? Would it harm their emotional development?
- What mix of methods in early reading instruction has the best long-term benefits for reading comprehension?



- Does math instruction based on the new NCTM standards boost students' mathematical reasoning?
- Does ending social promotion and increasing remedial instruction boost learning? Does it raise the drop-out rate?
- Can a voucher program boost the learning rates of children living in poverty?

Educators strongly disagree about these questions. We don't currently know the answers. The ethical action is not simply to stick to our personal beliefs on these issues but to do the much harder work of getting the needed empirical evidence.

My central contentions are two: first, we can answer questions like those posed above using scientific methods.

Second, the criteria we ought to use in evaluating studies designed to answer these questions are no different from the criteria used to judge scientific research in medicine.

## **What Caused the Change in Medicine?**

It's instructive to ask what caused the sea-change in thinking about medical research over the past 50 years.

One of the most influential experiences concerned the effectiveness of the Salk vaccine for polio (Meier, 1972). Early studies compared those who received the vaccine to those who did not. The results were discouraging: people receiving the vaccine had polio rates that were as high as those who did not receive it. But there was a problem: Subsequent studies showed that high income families were more likely than low income families to receive the vaccine. Moreover, high income families were also at GREATER RISK of contracting polio. So the early studies were biased against finding a positive effect of the vaccine.

A subsequent large scale study in 1954 assigned persons at random to receive the vaccine versus a placebo. The results unmistakably supported the vaccine. Random assignment assured that the two groups had the same risk of contracting polio in the absence of the vaccine. The large difference in disease rates that emerged during the study could be plausibly explained only by one factor: access to the vaccine. The earlier poorly controlled studies had it wrong; the later well controlled study had it right. Since then, untold millions have benefited from ever-improved versions of the vaccine. Experimentation played a key role in this process.

## **Parallels Between Medicine and Education**

The parallels in educational research are striking. The first widely-publicized evaluation of Head Start indicated that kids who had received Head Start had no better cognitive skills than kids who had not received Head Start. Many declared Head Start a failure. Subsequent investigation showed clearly,

however, that the families of Head Start kids were, on average, poorer than the families of non-Head Start kids. In light of these higher poverty levels, one might have expected the Head Start kids to do significantly worse on the cognitive test than the non-Head start kids if Head Start had no effect. So some argued that the evaluation results showed a positive effect of Head Start. Unfortunately, the experiment that might have settled the issue was never conducted.

In the early Salk Vaccine studies and in the Head Start evaluation, the socioeconomic status of the families was what statisticians call a "confounding variable" or a "confounder" for short. A confounder is a pre-existing characteristic of the participants in a study that is related to the outcome and also predicts treatment group membership.

In the Salk vaccine case, family income was linked to the disease—high-income kids were more likely to get polio—and to treatment group membership: high-income kids were more likely than low income kids to get the vaccine. Family income was therefore a confounder. To ignore the effect of this confounder was to bias the study against finding an effect of the vaccine.

In the Head Start case, child poverty was negatively related to the cognitive outcome but positively related to membership in Head Start. Ignoring poverty biased the evaluation against finding a positive effect of Head Start.

## **The Power of Experimentation**

One of the most common strategies in research is to try to identify and control for confounding variables. So in the Head Start study, one might match kids on family income and compare Head Start kids to the matched non-Head Start kids. This will eliminate family income as a confounder. The problem is that there are many potential confounders. We can't measure and control for all possible confounders.

Without random assignment, the burden is always on the researcher to show that relevant confounders were controlled. There is always some uncertainty that an important confounder was ignored, biasing the evaluation.

The power of the randomized experiment is that it controls all confounders. When kids—or classrooms, or schools—are randomly assigned to program A versus program B, we know that there are no confounders. Though the groups may still differ somewhat by chance on background characteristics, the differences are likely to be small. Moreover, our methods of statistical hypothesis testing accurately gauge the uncertainty that arises from such chance differences.

## **Questions and Answers About Scientific Research in Education**

I am allotted a short time in this talk, yet many good questions follow from the discussion so far. Let me pose a few of the obvious questions and, in each case, provide my own view of the answers. In this way

I hope to stimulate rather than end the important debate over scientific methods in educational research.

1. *Am I saying that only studies that use random assignment are scientific?*

No, I am not saying that, for three reasons.

First, random assignment is relevant only when causal questions are on the table. Many key questions in education are not causal. For example, we might ask:

- Have high school graduation rates changed over the past 10 years? Which kinds of kids, in which cities and states, are at highest risk of dropping out?

These are not causal questions but they do have scientifically-based answers.

Second, even when the question at hand is causal, it may be impossible to do a randomized study. Medical researchers have found a causal link between smoking and lung cancer without randomly assigning patients to smoke two packs a day. We need to know how family conflict affects school learning but we will never get the answer to that question from a randomized experiment.

Third, randomized experiments sometimes create artificial circumstances that limit the generalizability of findings.

2. *Ok, but suppose I do have a causal question. How do I judge the scientific quality of a study that does not use random assignment?*

Perhaps the key feature of scientific research is that the researcher is obligated to systematically and painstakingly evaluate alternative explanations for any finding of interest. Suppose we find that children who experience a new writing program display higher-quality writing than children who do not receive the program. We don't automatically conclude that the program is effective. Instead, we ask: Based on available theory and past evidence, what the likely confounders? Were children in the new writing program advantaged on those confounders?

A scientist is expected to search for disconfirming evidence. For example, perhaps the teachers in the new program were especially highly motivated. Maybe they simply spent more time teaching writing than did teachers not in the program.

A researcher might also ask: How does the writing program actually work? Which ingredients of that program are most likely linked to better writing? Were those components actually implemented?

If we can do a randomized experiment, we can eliminate many sources of bias. But the researcher is still obligated to consider alternative explanations for why the treatment did or didn't work.

Even in a randomized experiment, critics may claim that the wrong outcome variables were measured or that the study results do not generalize to the population of kids of interest.

Moreover, randomized experiments are never perfectly implemented. Some schools or classes or kids will drop out of the treatment group and the control group, potentially producing subtle or not-so-subtle biases.

What makes a causal comparative study scientific, then, is not simply whether the investigator used random assignment. In every study, the investigators must critically evaluate competing explanations for what was found and why.

3. *Isn't it a little polyannish to expect researchers to police themselves in this way? After all, researchers are human beings with biases.*

The burden of objectivity does not fall entirely on the shoulders of the individual researcher. The role of the scientific community is key. A commitment to evaluate alternative explanations and to search for disconfirming evidence is what we call objectivity. While individual scientists are expected to uphold objectivity in their work, objectivity is, in the final analysis, a collective responsibility of the scientific community.

The methods of a study should be open to public scrutiny and data should be available for re-analysis. Findings should be subjected to rigorous peer review. And key conclusions emerge typically from convergent results over multiple studies conducted by multiple investigators whose personal viewpoints typically differ. A healthy scientific community is essential in examining the results from such streams of research.

Scientific evidence from a single study is rarely decisive. Instead, scientific knowledge emerges as a community of scientists evaluate a stream of studies over time—more on this point later.

4. *Are randomized studies possible in education?*

They clearly are possible and often useful. We may point to the Tennessee class size experiment, which Frederick Mosteller has called the most important educational study in decades. There have been randomized evaluations of whole school reform (Thomas Cook's studies of James Comer' program (Cook, et al., 1999a; Cook, Hunt, and Murphy, 1999b), and randomized studies of the Reading Recovery program. There are ongoing randomized studies of vouchers, of neighborhood effects on educational achievement, and many studies of violence prevention and drug prevention in school settings (Cook, 2001). Randomized experiments cannot answer every question but their use in education can certainly be expanded.

5. *How can a randomized experiment in education be done ethically?*

Consider a popular program such as Success for All, which now is working in more than 1000 elementary schools in an attempt to boost early literacy (Slavin, in press). Many schools want to adopt the program but it is expensive and the resources available are limited. Indeed, it is

impossible to simultaneously implement the program in every school that wants it.

One might seek schools to volunteer to get the program at no cost or a reduced cost. All volunteering schools would ultimately receive the program, but the timing—that is, which schools get the program first—would be decided by a lottery. A lottery is a perfectly fair way to decide this question, given that resources do not allow all interested schools to receive the program simultaneously. The schools assigned to receive the program later become a randomized "wait list control group" whose outcomes can be compared to the outcomes of schools receiving the program during the waiting period.

Two strategies make this kind of approach ethically sound and practically feasible: 1) the use of a wait-list control group; and b) the assignment of schools rather than kids to treatments.

In other cases, for example, in the case of studying a tutoring program, assignment of kids at random to a treatment group or to a wait-list control will make good sense.

And in still other cases, there will be no true control group. Rather, there may be two alternative programs—both attractive—that can be compared. If we really don't know which works better, one can argue for randomized experimentation, providing, of course, that participants are willing to try either approach. This latter condition may not hold, in which case a well-controlled but non-randomized study may be needed.

6. *I mentioned that not all scientific question in education are causal. What are some examples?*

Over the past 30 years, the National Center for Education Statistics has commissioned a number of large-scale surveys. Thousands of scientific studies have used these data to help us understand:

- the levels of literacy and content knowledge of kids of varied background in varied states at varied times;
- how literacy levels and content knowledge are changing over time;
- how the mathematical and scientific understanding of US children compare to that of children in other countries;
- how approaches to teaching in math and science vary across schools within the US and between the US and other countries;
- how well qualified US secondary teachers are to teach their assigned content and where the shortages in teacher qualifications show up;
- the access of kids of varied background to various educational resources;
- which kids in which kinds of schools and communities are at highest risk of dropping out of school.
- how various kinds of schooling experience correlate with post-secondary educational opportunities and learning;
- how schools are financed and how school finances are linked to opportunities for learning;
- the levels of adult literacy in varied occupations and how this compares to literacy in other

societies.

There are many other examples (c.f., Whiteley, Weinshenker, and Seelig, 2002). These studies provide vast and useful scientific evidence about conditions of US education and targets for improvement.

7. *How are these "non-causal" studies judged?*

We need to know in every case if the sample selected represents the population we are interested in. We need to know if the methods of asking questions (e.g., by interviewing, questionnaires, tests, or administrative data collection) produce reliable and valid indicators of the variables of interest. We need to know if the methods of analysis are accurate. We need to ask whether alternative explanations have been painstakingly assessed.

But there is no set of simple rules for judging the validity of scientific research. Instead, we must rely upon a community of experts to judge scientific claims through well-organized peer review.

8. *So far I have mentioned only quantitative research. Does qualitative research play a role in making educational research more scientific?*

Yes, without doubt. Qualitative research has provided:

- careful description of how the most expert primary school teachers teach (for example, how they teach fractions or beginning reading);
- how children of varied cultural backgrounds experience the transition from home to school;
- how differences between "school language" and "home language" shape children's participation in classroom discourse;
- vivid descriptions of how individual children learn.

There are many more examples. These studies give us new ideas about teaching, new insights about why programs work when they do work. Qualitative research can spur creativity in educational research by giving us compelling "up-close" descriptions of how teaching and learning work—or don't work.

9. *How does one combine insights from various kinds of inquiry?*

Another analogy to medicine is perhaps instructive.

I mentioned earlier that public health scientists became convinced that smoking causes lung cancer even though it was impossible to test this link with randomized experiments.

First, a series of well-designed non-experimental studies showed that smokers were more likely than non-smokers to get lung cancer. Moreover, researchers found that, among smokers, the amount smoked and the probability of lung cancer were linked. As these studies controlled for

more and more potential confounders, it became more and more difficult to claim that biases caused by unobserved confounders explained the correlation between smoking and lung cancer.

Second, it was possible to conduct randomized experiments on animals. Scientists knew that they could not automatically generalize these results to humans, but the results of these experiments on animals were consistent with the growing body of non-experimental evidence on humans, helping shift the burden of proof to those who denied the causal connection between smoking and lung cancer.

Third, careful examination of the lungs of smokers revealed that the kind of damage to their lung tissue was consistent with the causal hypothesis.

Thus, three kinds of studies contributed to the emerging scientific consensus: non-experiments (essentially surveys) comparing smokers and non-smokers; true experiments (on animals), and what might be called qualitative research—careful inspection of lung tissue. The growing weight of evidence from this stream of research created a new consensus among scientists who had previously disagreed: smoking causes lung cancer.

Research evidence from varied studies is combined similarly in education. For example, despite the intense controversy over how to teach early reading, many points of consensus have emerged (Snow et al., 1998).

10. *The discussion so far conveys considerable enthusiasm about the role of science in education. Is there a risk in unrestrained enthusiasm?*

If science is to make a sustained contribution to education, we have to be careful not to oversell what science can do. Twice during the 20th century, educational researchers created overly-optimistic expectations for science (Raudenbush, 1982). When the results failed to meet these expectations, the scientific approach was discredited.

Consider, for example, E.L. Thorndike's lead essay in the founding issue of the *Journal of Educational Psychology* in 1910:

"A complete science of psychology would tell every fact about everyone's intellect and character and behavior, would tell us the cause of every change in human nature, would tell us the result which every educational force—every act of every person that changed any other or the agent himself—would have. It would aid us to use human beings for the world's welfare with the same surety of the result that we now have when we use falling bodies or chemical elements. In proportion as we get such a science we shall become masters of our own souls as we are now masters of heat and light. Progress toward such a science is now being made." (Thorndike, 1910:8)

Thorndike's hopes for the role of education were unrealistic. The failure to meet these inflated

expectations overshadowed very real but slow progress in the study of education. As a result, public interest in educational research declined. Much later, in the 1960s and 1970s, advocates of systematic evaluation of government anti-poverty programs again over-sold the power of science. The result was another cycle of disappointment and retreat from scientific thinking, from which we are now just recovering.

The lesson seems to be that scientific work can inform but never replace the judgement of the policy-makers, practitioners, and parents. We can do much better than we have done in making scientific information available, but if the contribution of research is to be sustained, we must be careful not to oversell it. Perhaps the best safeguard against overselling is strong peer review. Scientists are trained skeptics and a healthy dose of skepticism keeps the enterprise healthy, spurring new investigations while constraining unwarranted generalizations.

## Conclusions

1. Scientific credibility in educational research is no different from scientific credibility in health research. Four years on an NIH peer-review committee convinced me that top researchers in pediatrics, linguistics, developmental psychology, statistics, psychiatry, and education use essentially similar norms in evaluating the credibility of scientific claims and new research proposals.
2. In the final analysis, it is the peer review process within the scientific community that tells society when a claim is backed by science. If we want to improve scientific inquiry in education we must improve peer review. Peer reviewers in NIH are remarkably committed to principles of objectivity—to incredibly careful scrutiny of alternative explanations and evidence. We should set the same standard for peer review in education.
3. Scientific inquiry in education, however, is not cheap. An experiment that assigns schools to whole-school reform programs is a large-scale enterprise. The fraction of educational spending that goes to research is, however, tiny as compared to the fraction of the health care budget that goes to health research. It is hard to imagine how the educational research enterprise, including high-level peer review, can improve without more funding.
4. Scientific research in education takes many forms: large-scale surveys, small-scale qualitative inquiry, and experimental or non-experimental evaluations of new programs. However, in my view, our research agenda has been out of balance in recent decades. *Making valid causal inferences about the impacts of our interventions* is, in my view, the key challenge facing us now. Lots of good work using surveys and qualitative inquiry can help us identify unsolved problems—that is, targets of intervention, and also promising new ideas about practice. At the end of the day, however, we must judge our research enterprise by its track record in sorting out claims about the impact of educational interventions on student learning.
5. Randomized experiments are powerful tools for evaluating causal claims. We ought to find ways of doing more experiments.
6. However, well-designed non-experimental studies can also be effective and are sometimes the only way to assess impact. A recent conference called by Secretary Paige considered opportunities for learning "what works" by exploiting the availability of annual testing data on



students. Researchers at the Consortium for School Research in Chicago have led the way in this regard. They have shown how annual testing data on multiple cohorts of students can be used to assess the impact of a new policy that ends social promotion (Consortium on Chicago School Research, 1999). This kind of work requires considerable research skill but can be extremely cost effective.

7. Let's keep our aims for scientific contributions to education realistic. If we oversell what science can do, we set the stage for cynicism and a long-term decline in support for research.
8. Finally, lots of people think they know how to reform education. We've all been in school and we think we know what works. Teaching, however, is a demanding and complex activity, and organizing schools to support good instruction is equally challenging. Though educational research lacks the specialized language and complex equipment used in medical research, disciplined inquiry guided by critical scrutiny of truth claims is no less important. I am delighted and thankful to participate in a meeting such as this where these principles are taken seriously.

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