THE PUBLIC SCHOOLS AND THE BIBLE

THE FLEXIBLE WALL separating Church from State has again come under judicial scrutiny,[1] this time in the New Jersey case of *Tudor v. Board of Education.*[2] The Gideons International,[3] pursuant to their nation-wide program of Bible dissemination, had requested and had received permission of the Rutherford, New Jersey, Board of Education to distribute the King James version of the New Testament, Psalms, and Proverbs to public school children. The Bibles were to be distributed without charge, in the school building, after regular school hours, and only with the written consent of the children's parents. There was no religious propaganda of any kind in the Bibles, and there was to be no accompanying religious service. Before the program could be effected, the parent of a Jewish student sued to enjoin the proposed distribution.[4] The trial court denied the injunction, but on appeal the

[1] During the last ten years, the United States Supreme Court has considered three widely publicized cases in this field of constitutional law. The first was Everson v. Board of Education, 330 U.S. 1 (1947), in which the Court (5:4) permitted Roman Catholic children in New Jersey to use the public school bus system for transportation to parochial schools. The majority ruled that this constituted a public service function of the state. Messrs. Justices Jackson and Rutledge each wrote strong dissents denouncing the practice as a violation of the doctrine of separation between Church and State. A year later, the Court, in People *ex rel.* McCollum v. Board of Education, 333 U.S. 203 (1948), forbade the use of public school buildings for the teaching of religion (8:1). However, in Zorach v. Clausen, 343 U.S. 306 (1952) (the "released time" case), the Court (6:3) modified the *McCollum* decision by permitting the teaching of religion to public school children on released time outside the school buildings. Mr. Justice Douglas, for the majority, said (at 312-14): "The first amendment, however, does not say that in every and all respects there shall be a separation of Church and State. . . . When the state encourages religious instruction, or cooperates with religious authorities . . . it follows the best of our traditions. . . . But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects." Mr. Justice Black, who wrote the *McCollum* decision, dissented, claiming that the two cases were indistinguishable, 343 U.S. 306, 316 (1952). See Beth, *The Wall of Separation and the Supreme Court,* 38 MINN. L. REV. 215 (1954).

[2] 100 A.2d 857 (N.J. 1953).

[3] The Gideons International, an Illinois corporation, is exclusively a businessmen's organization, with a separate auxiliary for women. Membership is closed to professional persons, and only professed Christians (*i.e.* members of a church which makes such a belief a condition of membership) may join. See GIDEONS CONST. ART. III.

[4] The procedure in this case was rather involved. Ralph Lecoque and Bernard Tudor, Roman Catholic and Jewish parents respectively, joined as parties plaintiff,

New Jersey Supreme Court reversed.[5]

The court, speaking through Mr. Justice Vanderbilt, held that the King James version of the Bible is a sectarian work in that it is unacceptable to the Roman Catholic and Jewish faiths.[6] The court felt that the proposed distribution would amount to a denial of the First Amendment's guarantee of religious freedom[7] in that it would engender feelings of embarrassment among those who chose not to accept the Gideon Bible for reasons of conscience.[8]

The New Jersey court's reasoning in the *Tudor* case is twice confounded by the same court's decision in *Doremus v. Board of Education.*[9] There the court had held that the repeating of five Old Testa-

joining the board of education and the State of New Jersey as defendants. Before trial, the suit against the state was discontinued, and, with plaintiffs' consent, the Gideons' International intervened as party defendant. Before trial, Ralph Lecoque transferred his son to a parochial school, thus rendering the questions involved moot as to him. Mr. Justice Vanderbilt, in his opinion, nevertheless relied heavily on the Roman Catholic opposition to the King James version of the Bible. Tudor v. Board of Education, 100 A.2d 857, 859, 865 (1953).

It should be noted that the boards of education in the majority of our large cities have refused the sort of permission asked by the Gideons here; *e.g.*, New York, Chicago, Los Angeles, Detroit, and St. Louis. Much of the Gideons' success has been in smaller communities.

[5] Appeal was originally to the Appellate Division, but the case was removed to the New Jersey Court by special motion. N.J. SUPREME COURT RULES, 1:10-3 (1953).

[6] Opposition to the New Testament by the Jewish faith is readily appreciated. The Roman Catholic Church does not regard the King James version of the Bible as an authorized translation of the original scriptures. While the best known authorized Roman Catholic translation is the Douay version, the Church has authorized others which are translations of Jerome's *Vulgate.* WOYWOD, THE NEW CANON LAW 288-290 (3d ed. 1918).

[7] U.S. CONST. AMEND. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The First Amendment has been held applicable to the states through the Fourteenth Amendment. Zorach v. Clausen, 343 U.S. 306 (1952); McCollum v. Board of Education, 333 U.S. 203 (1948); Everson v. Board of Education, 330 U.S. 1 (1947); Cantwell v. Connecticut, 310 U.S. 296 (1940).

[8] In trial court, the plaintiffs had presented several psychologists as witnesses to testify that the proposed distribution of the Gideon Bible would result in division among the pupils along religious lines. Plaintiffs' Brief, pp. 27-33, Tudor v. Board of Education, 100 A.2d 857 (1953). The Gideons claimed that the psychologists' testimony was unreliable in that they had not been apprised of the method of distribution to be used. Defendants' Brief, pp. 29-30, Tudor v. Board of Education, *supra.*

[9] 7 N.J. Super. 442, 71 A.2d 732 (1950). An appeal was taken in this case to the United States Supreme Court, but was dismissed by a 6 to 3 vote. 342 U.S. 429 (1951). Mr. Justice Jackson (at 433-34), ruled that there was no case or controversy because appellants had shown no out-of-pocket loss, and ". . . there is no averment that the Bible-reading increases any tax they do pay or that as taxpayers they are,

ment verses and the Lord's Prayer in a public school was a non-sectarian exercise, and had cited with approval a long list of cases wherein the Bible had been held to be non-sectarian.[10] Instead of overruling the *Doremus* case, however, the New Jersey court specifically upheld it[11] and compounded the *non sequitur* by citing two other cases which evinced conclusions in direct conflict with that of the *Doremus* case.[12] An outright acceptance of the *Tudor* reasoning would seem to compel the conclusion that *all* translations of the Bible are sectarian, since no *one* is accepted by all faiths. This would lead to the ultimate conclusion that Bible-reading in public schools is a sectarian exercise, an outcome which, in turn, would require the repudiation of an imposing array of contrary decisions, including *Doremus*.[13]

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will or possibly can be out of pocket because of it. . . . It is apparent that the grievance which it is sought to litigate here is not a direct dollars-and-cents injury but is a religious difference." (The appellants in the *Tudor* case bore no expense, since the Gideons accepted the costs of the Bibles.) In the *Doremus* case, the New Jersey Supreme Court was composed of exactly the same justices who sat on it for the *Tudor* case.

[10] See, *e.g.*, Moore v. Munroe, 64 Iowa 367, 20 N.W. 475 (1884) (reading of the Bible in a public school is but "casual worship"); Billard v. Board of Education, 69 Kan. 53, 76 Pac. 422 (1904) (Bible not included in state constitution's ban on sectarian doctrine taught in public schools); Pfeiffer v. Board of Education, 118 Mich. 560, 77 N.W. 250 (1898) (public school Bible-reading held to be an important device to inculcate fundamental morality); Doremus v. Board of Education, 5 N.J. 435, 75 A.2d 880 (1950) (reading five Old Testament verses and repetition of the Lord's Prayer in public school is a non-sectarian exercise). *Contra:* Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251 (1910) (public school Bible-reading wrong in that it compels school children to join a form of worship). For decisions holding the King James version of the Bible non-sectarian, see Evans v. Selma Union High School, 193 Cal. 54, 222 Pac. 801 (1924) (King James version a non-sectarian book, and may be purchased by school library); Vollmar v. Stanley, 81 Colo. 276, 255 Pac. 610 (1927) (reading of King James version in a public school is not unlawful); Hackett v. Brooksville Graded School District, 120 Ky. 608, 87 S.W. 792 (1905) (constitutional ban against sectarianism in the public schools meant keeping the church out of school and did not forbid reading from the King James version); see also Church v. Bullock, 104 Tex. 1, 109 S.W. 115 (1908) (compulsory attendance at reading of King James version in public school permissible). *Contra:* Weiss v. City of Edgerton, 76 Wis. 177, 44 N.W. 967 (1890) (reading from a disputed scripture is a sectarian exercise).

[11] Tudor v. Board of Education, 100 A.2d 857, 866 (N.J. 1952).

[12] Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251 (1910), note 10 *supra*; Weiss v. City of Edgerton, 76 Wis. 177, 44 N.W. 967 (1890), note 10 *supra*. The court in the *Doremus* case ruled that these two cases were not controlling in New Jersey since both forbade the reading of *any* version of the Bible in the public schools.

[13] Perhaps one explanation for the court's inconsistency is the influence of policy and public opinion. In the *Doremus* case there was no organized religious opposition to the Bible-reading, while in the *Tudor* case there was a dispute between religious groups. An interesting sidelight on this point is the fact that the American

Moreover, the *Tudor* decision runs amuck of the reasoning of the *Doremus* case in a second respect. The question of embarrassment to those students who did not care to listen to Bible-reading never arose in the *Doremus* case. Yet there would seem to be no less embarrassment involved in leaving the classroom in order to refrain from listening than there is in refraining from accepting free Bibles.[14]

Although the constitutionality of the distribution of Bibles in public schools has never been adjudicated,[15] the great weight of authority in analogous cases might well cause doubts as to the soundness of the *Tudor* decision.[16] The bulk of judicial opinion concerning the sectarian nature of the Bible has been focused upon the constitutionality of Bible-reading in public schools,[17] as in the *Doremus* case. With but two exceptions,[18] the state courts have unanimously held that the Bible is a nonsectarian book, regardless of the particular translation,[19] and *a fortiori,* that the reading of the Bible in public schools does not violate the doctrine of separation of Church and State.[20]

Jewish Congress filed a brief *amicus curiae* in the *Doremus* case, urging that Bible-reading from the Old Testament be permitted, and yet this same organization, through its parent, the National Community Relations Advisory Council, filed a brief *amicus curiae* in the *Tudor* case for the plaintiff, and, in urging the court to enjoin the distribution of the New Testament, said: "The First Amendment's ban on laws respecting the establishment of religion prohibits state aid to religion even on a non-preferential basis."

[14] Reading from any part of any version of the Bible would be objectionable to atheists and Mormons. Reading from the New Testament would be objectionable to persons of the Jewish faith. Reading from the King James version would be objectionable to the Catholics. So it would seem that public school Bible-reading would cause embarrassment to a goodly portion of any average student body no matter which version is read. Non-assenters would be set apart from those who wished to participate in the reading.

[15] But *cf.* Miller v. Cooper, 56 N.M. 355, 244 P.2d 520 (1952) where the Supreme Court of New Mexico forbade certain public school teachers from displaying religious pamphlets on classroom tables and inviting students to take them home.

[16] See cases cited in note 10 *supra.* [17] *Ibid.*

[18] See cases cited in note 12 *supra.*

[19] Hackett v. Brooksville Graded School District, 120 Ky. 608, 617, 87 S.W. 792, 794 (1905): "The book itself, to be sectarian, must show that it teaches the particular dogmas of a sect as such, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. Although this question has never been ruled upon by the United States Supreme Court, in Vidal v. Girard's Executors, 2 How. 127, 200 (U.S. 1844), the Court did state, as dictum, that the New Testament was not a sectarian book.

[20] Evans v. Selma Union High School, 193 Cal. 54, 59, 222 Pac. 801, 803 (1924): "That the authors of religious books belong to a sect or church does not necessarily make their books of a sectarian character. Nor does the fact that the King James version is commonly used by Protestant churches and not by Catholics make its character sectarian. . . . What we have said of the King James version is equally applicable to the Douay [Catholic] version."

A possible escape from entanglements caused by the *Tudor* decision is to be found in the rationale of *McCollum v. Board of Education.*[21] There, the United States Supreme Court forbade the use of public school property for religious programs, although they were instigated, not by churches, but by an association of Jewish, Catholic, and Protestant laymen. Such a program, said the Court, would be a utilization of a tax-established and tax-supported school system for the propagation of religious beliefs. "And it falls squarely under the ban of the First Amendment."[22]

Certainly the adoption of the *McCollum* reasoning into the *Tudor* decision would have led the New Jersey Supreme Court into far less devious paths, and would have avoided inconsistencies which bid fair to open the door to additional litigation.[23]

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[21] 333 U.S. 203 (1947).

[22] *Id.* at 209-210.

[23] The court would then be able to ignore altogether the perplexing questions regarding the sectarian nature of the Bible and considerations of the voluntary method of distribution, and could base its decision on strong legal precedent.