

Religion in the News: June 2003

by Mister Thorne
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June was one more thrilling month in those exciting annals of Religion in the News. Let's see. A court ruled that a woman accused of doing Satan's work could sue a minister (the one who accused her of doing Satan's work) for defamation. All around the country, good people defied those highfalutin judges who just don't know much of anything about the U.S. Constitution. A school board member made a Jewish student listen to the Lord's Prayer, and some highfalutin judges are pondering whether that's legal. A public school told one of its teachers that she can't evangelize the students, and so she's going to see what some highfalutin judges think of that. There was a holiday to commemorate a mad man who destroyed the work of a god some 3,000 years ago. A law professor tried to get some highfalutin judges to see the obvious: a monument is not a law. Protestors showed their displeasure with a ruling handed down by some highfalutin judges. And there were a few anniversaries in the exciting annals of Religion in the News.

The Spirit of Satan at Work

On 11 June, the Iowa Supreme Court ruled that Jane Kliebenstein, a member of the Methodist Church in Shell Rock, Iowa can sue the Reverend Jerrold Swinton for suggesting that Kliebenstein was doing the work of the "spirit of Satan."

It all begins in March 1999. Swinton, a superintendent of the United Methodist Church, visits the church in Shell Rock to investigate "reports of strife within the congregation." While there, Kliebenstein whispers to Swinton something "scornful" about the church's pastor. Swinton then writes a letter threatening that Kliebenstein will be booted from the church if she "continues to cause dissension." He advises the congregation in Shell Rock to acknowledge that they allowed "the spirit of Satan to work in their midst." The letter is sent not just to the congregation, but to others living in Shell Rock.

Kliebenstein filed suit in a state district court. That court dismissed the suit because it involved church matters that are "off limits" to civil courts. Kliebenstein then took the matter to the state supreme court. She claimed that the matter was not simply a theological dispute within the church – something that U.S. courts avoid like the devil – but that Swinton's allusion to her as the spirit of Satan had "secular overtones." She claimed Swinton took the matter beyond the church when he mailed his letter to residents of Shell Rock who did not belong to the church.

The district court had dismissed Kliebenstein's suit based on the Doctrine of Church Autonomy. This doctrine is rooted in the case of [Watson v. Jones](#), decided by the U.S. Supreme Court in 1871. In that case, the nation's high court ruled that civil courts are not competent to decide theological questions. The state supreme court decided that when Swinton mailed his letter to people not belonging to the church, he took the dispute outside the church. Since it is no longer a theological dispute *within* the church, and since *Satan* does have secular overtones, the district court must consider her suit.

Those Danged, Highfalutin Judges

In 1992, the U.S. Supreme Court put the skids on school-sponsored prayers at high school graduation ceremonies. In the case of [Lee v. Weisman](#), the high court said the longstanding practice violated the First Amendment to the Constitution since it put people in the weird position of attending a civic ceremony and then either seeming to go along with the official prayers, or disrupting the ceremony to show that they didn't go along.

While many schools have honored the court's ruling, many others have flipped the bird: what right do a bunch of highfalutin judges have to tell us that we can't tell students (even Jewish students) that if they don't accept Jesus, they're bound for eternal damnation?

On 9 June, the 8th U.S. Circuit Court of Appeals heard a case about a graduation ceremony at Norfolk High School in Norfolk, Nebraska. Three years ago, a school board member decided that a civic ceremony was the perfect time for invoking that character known as Jesus Christ. He led the students in the Lord's prayer. The parents of a Jewish student filed suit, claiming the prayer ruined the ceremony. The court's decision may hang on whether the school board member was speaking on his own behalf (in which case, the prayer was constitutional) or on behalf of the school district (in which case, the prayer violated the religious rights of the Jewish student).

Evangelism 101

Barbara Wigg teaches elementary school in Sioux Falls, South Dakota. And she is perplexed. She wants to teach her favorite subject, but the school won't let her. Her favorite subject? Evangelism 101: teaching kids that unless they accept Jesus Christ, they're bound for eternal damnation. Wigg wants to teach kids about Jesus at the school, after school. The school says "No." Wigg says "Sue you."

A chapter of the the Good News Club meets at Anderson Elementary school, the school at which Wigg teaches second and third grade. The club is operated by [Child Evangelism Fellowship, Inc.](#) an evangelical organization that targets elementary-school students. It teaches the youngsters certain "truths from the Bible" and gives them an opportunity to "receive Jesus Christ." The school claims it would run afoul of the First Amendment if it allowed Wigg to evangelize kids at the school. Wigg claims that the school runs afoul of the First Amendment when it refuses to let her evangelize the kids: it infringes her free-speech rights.

On June 11, 2001 the U.S. Supreme Court ruled that if a public school allowed private groups to use its facilities, then it must allow the Good News Club to use its facilities. In the case of [Good News Club v. Milford Central School](#), the court ruled that to bar religious groups from using school facilities was to violate their free speech rights. It rejected the argument that the school would be seen as endorsing religious beliefs promoted by the Club. In that case, the Club's teachers were not the school's teachers.

What happens when the Club's teachers are the school teachers? Who knows? Stay tuned for yet another ruling from some highfalutin judges.

Mad Man Smashes Gift from God

The Jewish holiday of Shavout was celebrated the first weekend in June. The holiday commemorates the meeting between Yahweh and Moses on Mount Sinai some 3,400 years ago. According to legend, Yahweh gave Moses two stone tablets engraved with ten laws. In a fit of rage, Moses smashed the tablets shortly after taking possession of them.

A Monument is not a Law

Speaking of stone tablets engraved with ten laws, consider the case of Alabama's Chief Justice Roy Moore and his 5,200 granite monument to the Ten Commandments (see [Religion in the News: November 2002](#)). Moore installed the monument in the state judicial building in the middle of the night two years ago. Three lawyers that frequent the building sued to have the monument removed. A federal judge ordered Moore to remove the monument last December, but that order was put on hold pending Moore's appeal.

On 4 June, a three-judge panel of the 11th Circuit Court of Appeals heard arguments in the case. Two of the judges, both considered conservative, questioned Herbert Titus, the law professor who is representing Moore. The third judge, a liberal judge appointed by Bill Clinton, said nothing during the hearing.

Titus told the panel that the monument should stay because the Ten Commandments are the basis for the Declaration of Independence and the U.S. Constitution. Judge Ed Carnes, who was appointed by the first President Bush, said, “If we buy this argument, the chief justice can decorate the courthouse in any religious motif he likes.” Any judge in the state would be free to post a sign in his courtroom asking “What would Jesus Do?” Carnes asked Titus whether he thought posting such a sign would violate the Constitution. Nope. The monument is not a law, according to Titus, so how could anyone consider it a “law respecting an establishment of religion?”

Judge J.L Edmondson, appointed by President Reagan, told the law professor that he had some “tough hurdles” to overcome. Edmondson reminded Titus of the so-called Lemon test that the Supreme Court has long used in such cases. The test evaluates a law according to three criteria:

1. does it lack a secular purpose?
2. is its principal effect to advance or inhibit religion?
3. does it lead to excessive government entanglement with religion?

If the answer to any of these questions is *yes*, then the law violates the Establishment Clause of the First Amendment. Judge Edmondson said he had some problems with the Lemon test, but since the Supreme Court uses it, the appeals court is bound by it.

Titus said Judge Moore’s monument passes the Lemon test. And what is the secular purpose behind a monument bearing ancient Jewish laws? According to Titus, that would be maintaining that “unbroken history” of references to Yahweh.

The court took just under one month to issue its ruling in this case. It rejected Moore’s arguments; it said that if they were accepted by the court, then, “Every government building could be topped with a cross, or a menorah, or a statue of Buddha, depending upon the views of the officials with authority over the premises.”

The court, in a unanimous opinion, did not accept the very popular but mistaken idea that the Ten Commandments are the basis of U.S. law. And it rejected Moore’s argument that the federal government has no right to tell the Chief Justice of Alabama what to do. It ordered the monument removed, and it promised that its order would be enforced.

Interrupting the Inevitable

On 9 June, protestors in Ohio did what they could to interrupt the inevitable. They tried to stop workers from hauling away a bunch of 800-pound granite monuments engraved with the Ten Commandments. The monuments were located at four public schools in Adams County, Ohio and their removal was ordered by a federal court last November.

Barry Baker, from the town of Peebles, Ohio started the fuss over the monuments. In 1997, he was reading a copy of the local newspaper and he noticed a story about the monuments being placed at the schools. He thought there was something wrong about that. Teaching kids about religion belongs in the home, not public school, according to Baker.

Baker set himself in motion. He went to the schools and photographed the monuments and sent the pictures to the ACLU. The ACLU showed no interest in the matter. He talked to a local lawyer who advised him to get the minutes of the school board meeting at which the decision to install the monuments was made, but there was no record of the decision. He couldn't get the school board to remove the monuments, so he decided to file a lawsuit.

Last year, a three-judge panel of the 6th U.S. Circuit Court of Appeals agreed with Baker's assessment: putting the monuments on public school property was wrong; it violated the Establishment Clause of the First Amendment. The court ordered the monuments removed at the end of this school year. When workers showed up at one of the schools with a crane to lift the monuments onto a truck, protestors blocked the crane. The police were called in. They prayed with the protestors, arrested 30 of them, and then released them without any charges.

Like Michael Newdow, the atheist who got an appeals court in San Francisco to rule the Pledge of Allegiance unconstitutional last June, Baker got his share of what he calls "inappropriate" phone calls from those who think the Ten Commandments are somehow the basis of our laws and that federal judges just don't understand the First Amendment. Unlike Newdow, Baker is no atheist. He says he's a [Deist](#), the sort that believes there is a Creator, but that the Creator doesn't get involved in human affairs, doesn't take sides in disputes about posting ancient laws on school grounds, and doesn't issue laws requiring the execution of people who make "inappropriate" phone calls.

Highfalutin Judges Ignore Public Opinion

A recent poll shows that the public cares less about the religious beliefs of an orthodox Jew running for president than of a born-again Christian running for president. The [Quinnipiac University Polling Institute](#) released the results of a nation-wide poll it conducted at the beginning of June. One curious result of the poll is that 85% of respondents said that Joseph Lieberman's religious beliefs would make no difference in their decision to vote for him, while 69% said that President Bush's religious beliefs would make no difference. Another curious result is that while 18% said they were more likely to vote for Bush because of his religious beliefs, and 11% said they were less likely, when it came to Lieberman, 6% said they were more likely to vote for him because of his religious beliefs, and another 6% said they were less likely.

Other interesting results from the poll:

- More than two out of three want organized prayer in public schools.
- Nearly nine out of ten want the Pledge of Allegiance to continue to refer to the U.S. as one nation under one god.
- More than nine out of ten said they believed there was exactly one god.
- More than four out of ten said that religion should have more influence in politics.
- Nearly six out of ten said homosexual behavior is morally wrong.
- Almost three out of four said they believe in a life after death.
- Over half said they pray each day.

Last March, the Institute released a poll showing that most people (more than three out of four) think those highfalutin judges on the Supreme Court should pay less attention to the Constitution and give more consideration to public opinion.

Happy Anniversary

It was one year ago that the 9th Circuit Court of Appeals in San Francisco issued its very controversial in the case of [Newdow v. U.S. Congress](#), a ruling that said the Pledge of Allegiance is unconstitutional because it advances an official religious belief. According to the U.S. Congress, the president of the U.S., and the Supreme Court, there's little question about it: there's precisely one god. And it's not the distant god of Barry Baker and the Deists. No, the official god of the U.S. government is very concerned about the affairs of man. For instance, it roots for the U.S. whenever the country goes to war.

In appreciation of all that that god has done for this nation, we ask that our children pledge allegiance to it when they go to school. But those highfalutin judges in San Francisco! They don't seem to give one hoot about public opinion. For some reason, they're fixated on the Constitution and the Bill of Rights and the intent of the Founders. What fools!

June also marked the 40th anniversary of another controversial court ruling, the Supreme Court's ruling in the case of [Abington v. Schempp](#), a ruling that said organized prayer in the public schools was unconstitutional, despite the overwhelming public support for it. Like the appeals court in San Francisco, the Supreme Court didn't seem to care much about public opinion: didn't even mention it in the ruling. Those highfalutin judges seem to be obsessed with the Constitution for some reason.

This month marks the one-year anniversary of Religion in the News.

Commentary

In many ways, California continues to lead the nation. Look at California today, and you can see the future of the country. According to the 2000 Census, less than half the people in California can relate to the Founding Fathers in a particular way: by ethnicity. That's right. According to the latest census, less than half the people in California are what you might call European Americans.

Look at the San Francisco Bay Area. Given the high rate of immigration of Asians to the Bay Area, and the continuing migration of natives from the Bay Area, it's not hard to suppose this in the near future: there's a town near San Francisco that's predominantly Hindu.

That's easy to imagine. The area already has lots of immigrants from India. Like other immigrant groups, Indians tend to form their own communities. You can find communities in the Bay Area that are dominated by Chinese, and others that are predominantly Japanese. You can find communities that are dominated by Christians and you can find others that are dominated by Muslims. Let's suppose we have a town that's predominantly Hindu.

Now, suppose this: to accommodate the preferences and beliefs of the majority, the town council has passed an ordinance against the sale of meat, and the local school board has changed the Pledge of Allegiance to call this "one nation, under the gods." It's posted signs in each public school classroom saying, "We Trust In The Gods." Such signs are also posted in the public buildings in the town, including the Post Office.

Finally, suppose this: the Catholic parents of a girl attending a public elementary school in the town are considering a lawsuit against the school board. (What actually happens is this: a conservative, civil rights organization hears about their situation, agrees to help them, and is willing to file the suit on their behalf. In fact, the organization is quite eager to file the suit.) The suit claims that the changes to the Pledge and the national motto are not fair to these Catholic parents or their daughter. The parents are trying to raise their daughter as a good Catholic and they don't want her reciting a pledge that refers to a bunch of gods. They don't want her continually exposed to official signs that say there are many gods.

What do you think? Should the parents go forward with the suit, or should they forget it and just live with the situation? Should they pack up and move to another town, one that's mostly Christian? Should they just tell their daughter not to say the Pledge and let it go at that? Think about it. Suppose you were in their shoes. What would you do?

Do the parents have a right to raise their daughter with a belief in one god? The Ninth Circuit Court of Appeals in San Francisco says they do. And that's a darned good thing for these parents, because if they file their suit in a federal district court and that court rules against them, their next stop is the Ninth Circuit Court.

Does the school have any right to have the students recite a pledge that says there are lots of gods? The Ninth Circuit Court says no, it doesn't. It says that such a pledge violates the First Amendment. As a matter of fact, that court issued just such a ruling one year ago. It ruled that having public school students recite a pledge that says how many gods there are is unconstitutional, a violation of the First Amendment.

Sounds like a reasonable ruling, right? Well, it didn't strike the president as reasonable. He said it was "ridiculous." It didn't strike Congress as reasonable. Congressional leaders called the ruling "crazy, outrageous, nuts, bizarre." The House and the Senate passed resolutions denouncing the court's ruling. Some legislators talked about a constitutional amendment to preserve the Pledge. Others talked about breaking up the appeals court.

Remember that? Remember all the commotion when the Ninth Circuit Court of Appeals ruled the Pledge of Allegiance unconstitutional because it said that the U.S. was "one nation, under God?"

The case was brought by Michael Newdow, an atheist whose daughter attended public school in a Christian community. He claimed it was unconstitutional for the school to have students recite the Pledge. Why? Because it violates the Establishment Clause of the First Amendment: *Congress shall make no law respecting an establishment of religion*. The appeals court in San Francisco agreed with him. The government can't advocate religious beliefs, even the popular belief that there is one god over this nation.

When the court's ruling was announced, the country suffered a mild case of hysteria that lasted about one week. To cure it, expert after expert appeared on FOX News and assured us that the appeals court's ruling was nothing to worry about. They told us that the case would go to the Supreme Court, and – like most every case appealed from the court in San Francisco to the Supreme Court in Washington, D.C. – the ruling would be set aside. Not to worry.

Why were so many experts so sure that the Supreme Court would overrule the appeals court? Can't the Supreme Court surprise us as it did in *Roe v. Wade* and in *Brown v. Board of Education*? Can't it side with those constitutional scholars who didn't appear on FOX News, who didn't think the ruling was ridiculous, who said it was good law solidly based on longstanding Supreme Court rulings?

While experts on TV are free to use gut-level feelings to come to their conclusions, the Supreme Court – which might hear this case in its next term – is much more deliberate. What will it consider if it hears the case? What precedents will it point to? What notable quotes from previous rulings will the justices reference to support their opinions?

The court is very likely to refer to previous cases concerning the Pledge. It's likely to refer to the case of [Minersville School District v. Gobitis](#), decided in 1940, 14 years before Congress added the phrase "under God" to the Pledge. That case was about a school district that said students had to recite the Pledge. It was about a brother and sister – Jehovah's Witnesses – who were expelled from school when they refused to recite the Pledge because of their religious beliefs.

Their father filed suit against the school district. He wanted his children to attend public school and not have to recite the Pledge, to not have to offend their beliefs. The court found that the Pledge fostered national unity, that unity was the basis for national security, and that national security was far more important than the freedom to practice peculiar religious beliefs. The court ruled that children in public schools could be required to recite the Pledge.

If the court refers to *Minersville*, then it will certainly refer to a case decided just three years later, the case of [West Virginia State Board of Education vs. Barnett](#). Like *Minersville*, this was a case where the law and the religious beliefs of Jehovah's Witnesses were in conflict. West Virginia passed a law that said parents could be sent to jail if their children refused to recite the Pledge, and the children could be sent to reformatories. The court took this opportunity to overrule its decision in *Minersville*, a decision that was used by many to justify public persecution of Jehovah's Witnesses.

In *Barnette*, the court said that to require students to recite the Pledge was to invade, "the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control." *Minersville* was history. Students could no longer be required to recite the Pledge.

The court has never strayed from its ruling in *Barnette*: public school students cannot be forced to recite the Pledge. That's sure to be noted in the *Newdow* case, just as it was widely noted by experts on TV. The atheist's daughter doesn't have to recite the Pledge, or she can say the Pledge and just omit the two offending words. The school isn't trying to convert her; it's not trying to force her to accept a religious belief. So, the father's gripe about the Pledge is much ado about nothing, right? Ditto for our Catholic girl surrounded by Hindus pledging their allegiance to a nation under the gods.

Michael *Newdow* (the atheist behind this case) is sure to argue that, even if his daughter doesn't have to say the Pledge, or even if she does say it – even if she believes this is a nation "under God" – the school has no right to promote an official religious belief, especially among impressionable grammar school students. If his daughter doesn't say the Pledge, just hearing all the other students say it day after day, year after year, is a subtle form of coercion.

The Supreme Court is likely to agree. Consider the case of [Santa Fe Independent School District v. Doe](#), decided in 2000. This case asked whether it was a violation of the Establishment Clause for a student to deliver a prayer over a high school's public address system before a varsity football game. The court ruled it was a violation, that "the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship."

Or consider the case of [Lee v. Weisman](#), decided in 1992. The court was asked to rule whether it violated the Establishment Clause for public schools to have clerics recite prayers at graduation ceremonies. The court ruled it was a violation, a subtle form of coercion: "Prayer exercises in elementary and secondary schools carry a particular risk of indirect coercion."

The court's opinion in *Lee* contained this notable quote: "What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." Look for that quote to be referenced in the *Newdow* case.

The court takes special care when it comes to public schools. For most children (those whose families can't afford private school or don't have the wherewithal for home schooling), attendance in public school is mandatory. School children are a captive audience. They are young and impressionable. For these reasons, "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools."

Does that suggest the court might uphold the appeals court's ruling in *Newdow*? Does it give any hint how the court might rule if it gets to hear our fanciful case about the Catholic girl surrounded by Hindus pledging allegiance to a nation under the gods? If it's unconstitutional to subject high school students to prayers before football games or at graduation ceremonies, then it must certainly be unconstitutional to subject grade-school students to a daily Pledge that says there are one or more gods, right?

While the Supreme Court hasn't ruled on the Pledge since "under God" was added in 1954, it has referred to the Pledge in a number of cases. Could those references give us clues as to how the court might rule in the *Newdow* case?

The Pledge was briefly mentioned in the case of [Engel v. Vitale](#), decided in 1962. The court ruled that it was unconstitutional to require an official prayer to be recited in public school. Justice Douglas wrote, "The Pledge of Allegiance, like the prayer, recognizes the existence of a Supreme Being." That does sound like a Supreme Court justice saying that the Pledge advances a religious belief: that there is one god.

The next year, there was the case of *Abington v. Schempp*. The court reaffirmed the notion that "we are a religious people whose institutions presuppose a Supreme Being." The court mentioned the Pledge and the national motto in a section titled *Activities Which, Though Religious in Origin, Have Ceased to Have Religious Meaning*.

Twenty years later, in the case of [Marsh v. Chambers](#), Justice Brennan said the national motto and the Pledge had "lost any true religious significance." The next year, in the case of [Lynch v. Donnelly](#), he suggested the motto and the Pledge might be constitutional "because they have lost through rote repetition any significant religious content." One year later, Chief Justice Burger, in the case of [Wallace v. Jaffree](#), questioned whether the court's ruling in that case meant the Pledge was unconstitutional since "under God" was added to it. In subsequent cases, a number of justices have noted that, unless exceptions are made, the Pledge and the national motto are unconstitutional.

Can there be exceptions to the Constitution?

In the *Newdow* case, the Supreme Court might invoke *Ceremonial Deism*, the notion that references like "under God" and "In God We Trust" have no religious significance, that they've been around so long and said so often that they have lost their religious meaning. Perhaps the court will find that references to a "Supreme Being" have no more religious meaning than phrases like, "Yahoo!"

In this autobiography, Thomas Jefferson talked about the drafting of the [Virginia Act for Religious Freedom](#), the forerunner to our First Amendment. Someone proposed that the preamble to that act contain a reference to "Jesus Christ, the holy author of our religion." The reference was rejected because the act, according to Jefferson, was meant to protect the religious freedom of all, "the Jew and the Gentile, the Christian and Mohammedan, the Hindoo and Infidel of every denomination."

What would Jefferson say about the controversy surrounding the Pledge? Would he say that if a Christian community can have a version of the Pledge that says we're "one nation, under God," then a Hindu community can have a version that says we're "one nation, under the gods?" Or would he say we should have one version that just says we're "one nation?"

Stay tuned. Some highfalutin judges are likely to tell us exactly what Jefferson would say.

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