

Interview Hot Sheet Bible Curriculum

Prepared by: Bill Kenworthy, Research Assistant (Nashville)
May, 2007

The 1947 U.S. Supreme Court case *Everson v. Board of Education* was the first case to address the establishment clause of the First Amendment and judicially “erected” the wall of separation between church and state.

The Supreme Court continued to hear lawsuits concerning religion in public schools into the 1960s. In 1963 the Supreme Court case *School District of Abington Township v. Schempp* (discussed below) struck down devotional Bible-reading by school officials and addressed the teaching of the Bible in schools. More recent court cases have involved differences about the limits of student religious expression and the constitutionality of Bible courses offered in the curriculum. Advocates of teaching the Bible point out that knowledge of the Bible, arguably the most influential book in the United States and the Western world, is essential to help us understand the world today (culturally, socially, politically). Opponents of Bible classes point to the ease in which a class can turn into religious indoctrination. Finding the right formula to enable the teaching of the Bible while avoiding constitutional pitfalls has been the goal of those school districts wishing to teach Bible classes.

According to a recent article in *Time*, 460 school districts in at least 37 states offer classes that teach the Bible. There are two competing courses being used in schools. One is provided by the National Council on Bible Curriculum in Public Schools (National Council), the other by the Bible Literacy Project (BLP).

The National Council program has endorsements from many individuals and organizations including Pacific Justice Institute, American Center for Law and Justice and Foundation for Academic Excellence. However, the National Council has also received plenty of criticism of its Bible-study curriculum from such organizations as the People for the American Way and the ACLU. One criticism of the National Council’s program is that it uses the Bible as its primary textbook and presents it as a historical record of past events. Critics, and federal courts, object to this approach and view the Bible as a book of religious messages and teachings, not as a history book. Ex. *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582, 596 (N.D. Miss 1996.) Others have added that the National Council’s curriculum has a particularly Protestant viewpoint at the expense of other religions, thus giving the impression of endorsing one religion over another. Use of part of the National Council program led, in part, to a federal lawsuit in Florida in 1997. The court issued an injunction prohibiting the Lee county school board from teaching the National Council’s part of the program (discussed further below). The school board eventually removed the entire program.

The BLP program also has many endorsements from individuals and organizations including National Association of Evangelicals, Catholic Biblical Association, and American Jewish Congress. BLP has also had its share of criticism. Americans United for

Separation of Church and State has said that BLP's textbook, "*The Bible and Its Influence*," "tends to whitewash history, presenting the Bible and Christianity in an overwhelmingly positive light" and that it reflects "a subtle 'Christian nation' bias."

Legal Background.

In 1963, the U.S. Supreme Court decided the case *School District of Abington Township v. Schempp*. *Abington* was a consolidation of two cases, both involving the reading of Bible verses before the start of school activities. In one of the cases a parent challenged a Pennsylvania statute which required verses from the Bible be read at the beginning of every school day; in the other a rule adopted by the Baltimore Maryland School Board requiring devotions, usually consisting of Bible readings or recitation of the Lord's Prayer, was challenged by parents. The Court examined both pieces of legislation against the religion clauses of the First Amendment and devised a test, which would become the first prong of the *Lemon* test, discussed below, to determine if the legislation is constitutional. Justice Thomas C. Clark, who wrote the opinion for the Court said, "The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion." The Court found the legislation in these cases in violation of the First Amendment and determined that public schools may not require devotional use of the Bible. However, in the same decision, the Supreme Court explicitly acknowledged that academic study of the Bible in public schools is constitutional. Justice Clark wrote, "Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." *Abington School District v. Schempp*, 374 U.S. 203, 225 (1963)

The Court's decision in *Abington v. Schempp* banned devotional use of the Bible in the curriculum, but not academic teaching about the Bible.

***Lemon* test**

To help interpret establishment clause cases, such as the constitutionality of teaching the Bible in public schools, the Court uses several tests, the primary one being the *Lemon* test.

The *Lemon* test, formulated by Chief Justice Warren Burger, derives its name from the 1971 decision *Lemon v. Kurtzman*, in which the Court struck down a state program providing aid to religious elementary and secondary schools. The purpose of the *Lemon* test is to determine when a law or government action has the effect of "establishing religion." There is some argument concerning what exactly "establishing religion" means but a majority of the Supreme Court justices believe the prohibition against "establishing religion" means the government can't promote religion in general or one religion over another.

The test itself has three prongs: First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive government entanglement with religion." The first prong is based on the idea that government should only concern itself in civil matters, leaving religion to individual conscience. Second, a court needs to determine whether the state action has the primary effect of advancing or inhibiting religion. Finally, the court would consider whether the action excessively entangles religion and government. While religion and government must interact at some points while co-existing in society, the concern here is that they do not so overlap and intertwine that people have difficulty differentiating between the two.

Although the test has come under fire from several Supreme Court justices, it has been used in many establishment-clause/religion rulings and courts continue to use it in most establishment-clause/religion cases.

Lower court decisions

Vaughn v. Reed, 313 F. Supp. 431, 434 (W.D. Va 1970) Parents of students challenged a program where the Martinsville School District allowed members of the Week-Day Religious Education Council, a private religious organization, to send teachers into selected grades of the Martinsville school system for religious education. The classes were held in the regular classrooms during school hours and the consent of the parents was required to allow their children to take the program. The children of parents who did not consent left the classroom during these programs and were given a study period. The court questioned a couple of aspects of this program, such as the need for parental consent and the use of "outside" teachers, and ordered them changed for the program to be constitutional.

"The court sustains the position of plaintiff that no religious education program should be conducted in the public schools which employs material or practices which would amount to an indoctrination of religion. At the same time the court holds that a program encompassing all students controlled by the school authorities and practices without indoctrination of religion is not unconstitutional, all of which is adjudged and ordered."

Wiley v. Franklin, 468 F. Supp. 133, 150 (E.D. Tenn. 1979) This case was a consolidation of separate actions. Several Tennessee school boards were sued by parents and students who claimed that their religious freedom was violated by the Bible-study course the school boards sponsored. The Bible-study curriculum and the selection, training and supervising of the course teachers was handled by a voluntary citizen organization called the "Bible Study Committee," not the school boards. The court concluded that the preponderance of evidence favored "finding that the nature, intent and purpose of the Bible study courses as heretofore taught and as currently being taught is not primarily history, literature, or otherwise secular, but rather is of a religious nature...the Court must conclude that with the Bible Study Committee not only funding the Bible study courses but also establishing the curriculum and selecting, training and supervising the teachers,

the public school Bible study program constitutes an excessive entanglement between government and religion.”

“The Constitutional issue presented in teaching the Bible study courses in the public schools is not the Bible itself, but rather the selectivity, emphasis, objectivity, and interpretative manner, or lack thereof, with which the Bible is taught. The religious freedom clauses of the First Amendment are not intended as vehicles for banning books, including the Bible, from the public schools. Nor are those clauses intended to make official censors of public school teachers and administrators. Rather, they were intended to require of them only that they refrain from religious teachings as well as that they refrain from interference with the religious beliefs of their students and patrons.”

Hall v. Board of School Comm'rs, 656 F.2d 999 (5th Cir. 1981) A parent of a student enrolled in the Conecuh County, Ala. public school system brought suit against the school for, among other things, teaching an elective Bible Literature course in a manner which advanced religion. “The district court after trial dismissed the action as moot because...the Bible Literature course was not then being taught at Repton High School. Despite this jurisdictional holding, the court made findings of fact on the merits of plaintiffs' claims and concluded that...plaintiffs failed to prove that the Bible Literature course was taught in a way that advanced religion.” The 5th Circuit held that the action was not moot and found that the primary effect of the Bible Literature course *was* the advancement of religion. They found that the textbook used for the course, which was used in conjunction with the Bible, “reveals a fundamentalist Christian approach to the study of the Bible devoid of any discussion of its literary qualities.”

Crockett v. Sorenson, 568 F. Supp. 1422 (W.D. Va. 1983) The parents of a child attending Bristol elementary school in Virginia brought suit against the school claiming that a course in Bible instruction offered in the fourth and fifth grades violated their child's First Amendment rights. After examining the course Judge Kiser, who wrote the opinion for the court said, “The principal vice I find in the Bristol program lies not in the grade level at which it is taught nor in the classroom presentation that I observed in either the courtroom demonstration...or the video tape classes..., but in the strong religious overlay that stems from the conception and management of the program by the sponsors.” The course was begun in 1941 by a group of Protestant ministers and continued to 1982. “Since the inception of the program, the teachers of the Bible course have been selected, hired, supervised and paid by the private sponsoring group. The public school officials exercise no control or supervision over the teachers; the sole official duty that the teachers have to the school officials is to report attendance.” The court did concede that in the presentations they viewed, they saw no attempt to indoctrinate any of the students in the tenets of any religious faith. “Nonetheless,” stated judge Kiser, “it is clear from the evidence that the Bible teaching program was instituted as a religious exercise and has continued as such until the present.” The judge declared the program unconstitutional and said it must be ended.

Doe v. Human, 725 F. Supp. 1503 (W.D. Ark. 1989) The parent of a child attending an Arkansas public school brought suit against the school claiming that the Bible class,

taught at the school during school hours by volunteers, violated the child's First Amendment rights. The court in this case found that "Even on the relatively undeveloped state of the record before the court, it is quite clear that the course in question is predominantly religious and devotional in nature." After discussing the course, including some of the lessons taught and the songs that were sung as part of the course, the court concluded: "In sum, the evidence in the record shows quite clearly that many of the songs and parables taught in the class endorse Christianity, and have very little, if any, secular effect." The court additionally addressed another issue brought up in the school's brief. The school argued "that the total exclusion of the Bible from public schools would violate freedom of speech and religion, as well as the right of Gravette parents to educate their children." To this the court noted the decision in *Abington* that said "Bible study, when presented objectively as part of a secular program of education, may...be effected consistently with the First Amendment." The court noted that their decision for the parents in this case did not require total exclusion of the Bible, but merely ended the specific program which was being taught.

Herdahl v. Pontotoc County Sch. Dist., 933 F. Supp. 582 (N.D. Miss. 1996) A parent filed suit against a public school alleging that various school practices, a Bible instruction class among them, violated the establishment clause. Concerning the Bible instruction class the court stated, "The issue currently before the court is not whether it is appropriate for public schools to teach the Bible, rather, it is the method of that instruction that is in question." In Pontotoc County a group from the local Protestant churches, the "Bible Committee," sponsored a program on teaching the Bible in public schools. "Under this program, the Bible Committee hires teachers who are allowed by the District to conduct classes on school property during normal school hours. The Bible teachers have no employment contracts with the District, and are the only teachers working in the school district that are not paid by the District. The District maintains that it has supervisory authority over the teachers. The District provides classroom space at the Center for the Bible class in all grades in which it is taught, as well as related materials such as bookshelves. In addition, the District provides public funds to the Bible teachers to be used for the purchase of books, supplies, and other materials to be used in the course, and such funds have been expended for such purpose."

The court looked at how the class was taught and applied the *Lemon* test. Finding that the class failed all three prongs of the test, the court concluded "that the predominant purpose of the Bible class is not secular, rather, it is a part of a concerted effort by the religious sponsors of the class, fully condoned by the District, to inculcate students at North Pontotoc into the beliefs and moral code of fundamentalist Christianity." The court found the class to be unconstitutional and ordered the school system to stop offering the classes.

Gibson v. Lee County Sch. Bd., 1 F. Supp. 2d 1426 (M.D. Fla. 1998) The Lee County School Board, after much deliberation, decided to begin offering a two-semester Bible history course in Lee County high schools in the 1998-99 school year. The first semester of the course would be titled: "Bible History: Old Testament," and the second semester would be titled "Bible History: New Testament." The courses were a combination of a

curriculum used in the Marion County, Fla. public schools and the National Council on Bible Curriculum in Public Schools curriculum.

The lawsuit was brought by Lee County taxpayers who sought a preliminary injunction claiming that the course did not present the Bible objectively as part of a secular course. The court started by looking at the first-semester course and applying the *Lemon* test. The court found that the school satisfied the “secular purpose” prong of the test because the school board took the advice of counsel used by the board during deliberations and modified the curriculum on the basis of that advice. Since the course was not yet being taught the remaining requirements of the *Lemon* test could not be evaluated. On this basis the court denied the preliminary injunction request for the “Bible History: Old Testament,” finding that the plaintiffs did not demonstrate a substantial likelihood of success.

The court then turned to the second semester course, “Bible History: New Testament.” It noted that the school board voted to adopt the National Council’s curriculum in its entirety, despite counsel’s recommendation that numerous changes to the program were needed to meet constitutional standards. After looking at the evidence the court held that the plaintiffs established a substantial likelihood of success in their claim against the “New Testament” portion of the curriculum and granted their preliminary injunction request.

Doe v. Porter, 188 F. Supp. 2d 904 (E.D. Tenn. 2002) Parents of children attending a Rhea County, Tenn. public school brought suit against the county school board claiming that a Bible education class taught at the school violated the establishment clause. The Rhea County school board allowed a program called “Bible Education Ministry” to be taught in the school system. The program is operated by Bryan College, a Christian liberal arts college, and is taught by student volunteers from the college. The court, quoting from the *Wiley v. Franklin* case discussed above, pointed out that “the Bible may be taught in the public schools if it is taught by trained educators, and if it does not encourage a commitment to a set of religious beliefs. Such biblical instruction may include non-devotional instruction in biblical literature, biblical history, and biblical social customs.” After noting this, the court said: “The instruction in the Rhea County Schools does not meet these criteria. The Rhea County courses are being taught to the youngest and most impressionable school children by college students who have no discernable educational training and no supervision by the school system. The BEM lesson plans retained by Bryan College reveal that the children are being taught that the Bible conveys literal truth about God and Jesus Christ reflective of the Bryan College ‘Statement of Belief.’ . . . In short, the public school elementary students are being taught what might well be a Sunday School class in many of the Christian churches in Rhea County. At oral argument, counsel for defendants conceded that the Bible was indeed being presented in the Rhea County Schools “as the truth.” The court declared the BEM program unconstitutional and enjoined the school district from teaching the program.

The 6th Circuit upheld the district court’s decision. *Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004)

Legislation.

On April 20, 2006, Georgia's Gov. Sonny Perdue signed Senate Bill 79, which became effective on July 1, 2006 as section 20-2-148 - *Elective course in History and Literature of the Old and New Testaments Eras*. This is believed to be the first instance of a state sanctioning the teaching of a class devoted to the Bible. The classes are offered as electives and, according to the law, are to "be taught in an objective and nondevotional manner with no attempt made to indoctrinate students as to either the truth or falsity of the biblical materials or texts from other religions or cultures" and "shall not include teaching of religious doctrine or sectarian interpretation of the Bible or of texts from other religions or cultures."

Alabama

Alabama's House Majority leader Ken Guin and House Speaker Seth Hammett co-sponsored House Bill 58, which sought to make "The Bible and its Influence" the exclusive course and textbook for Alabama. The bill was indefinitely postponed in the House on January 16, 2006.

Texas

State Rep. Warren Chisum introduced HB1287 to the Texas House of Representatives in February 2007. The original bill would have required the state's public schools to offer courses in the "History and Literature of the Old and New Testaments" using the Old and New Testaments as the basic textbook for these courses. The bill was passed by the House Public Education Committee with a major modification; the courses are to be offered as electives. The new version of the bill also addresses teacher qualifications and specifies that the courses must be taught in an objective and non-devotional way. There is no Senate sponsor for the bill.

So how can the Bible be taught?

According to the Supreme Court the Bible must be taught "objectively as part of a secular program of education." Though this is rather vague the lower courts, in the decisions discussed above, have clarified it somewhat and have at least laid down a foundation.

In *Gibson v. Lee Co. Sch. Board* the court said that the local school board should supervise and control any Bible study course, including the hiring and firing of teachers, setting the curriculum and selecting all teaching materials; the teachers should be properly certified to teach such a class and no inquiry should be made to determine their religious beliefs, or lack thereof; Bible study courses should be offered as elective courses; private contributions may be accepted and solicited to fund such a program but the funds must be received with no conditions attached; and finally no attempt must be made to indoctrinate the students as to the truth or falsity of any Bible materials.

The courts have not, however, weighed in on *how* to teach a Bible study class. In the *Wiley* case the court said, “That Bible study courses can be designed for use at all public school levels, from kindergarten to college graduate level, and can be designed to avoid violation of the First Amendment religious freedom strictures cannot be doubted. That the methodology of such teaching would vary according to grade level and that there may be differences, even strong differences, among school administrators and academicians as to the more appropriate methodology to be followed at any particular grade level is a matter that addresses itself solely to appropriate school authorities and is not within the province of this Court.”

Other sources do not provide a step-by-step how-to guide, either, but they have provided further guidelines for schools to follow. For instance 17 religious and educational organizations released a document titled “*Religion and the Public School Curriculum: Questions and Answers*.” In it they laid out some guiding principles for schools to follow to ensure they stay within the boundaries of the First Amendment. These guiding principles point out that:

1. The school's approach to religion should be academic, not devotional;
2. The school may strive for student awareness of religions and religious beliefs, but should not press for student acceptance of any one religion;
3. The school may sponsor study about religion, but may not sponsor the practice of religion;
4. The school may expose students to concepts involving religious diversity but may not impose any particular view;
5. The school may educate about religions but may not promote or denigrate any religion;
6. The school may inform the student about various beliefs, but should not seek to conform him or her to any particular belief.

The Texas Freedom Network, a non-partisan non-profit organization that refers to itself as “a mainstream voice to counter the religious right,” has its own recommendations to schools. The group’s recommendations closely follow the courts’ recommendations but add two important elements. It suggests that “the process by which local school boards decide to offer Bible courses and choose the curricula for those courses should be open and transparent and invite the full participation of parents and other citizens from the community” and “School officials should regularly monitor the content of Bible courses to ensure that they are academically and legally appropriate. Special training might be required for administrators to help them recognize inappropriate sectarian elements.” These are important elements to encourage outside participation and ensure adherence to a constitutionally sound program.

Link to “The Bible and Public Schools”

<http://www.freedomforum.org/templates/document.asp?documentID=3978>

Texas Freedom Network recommendations to schools,

<http://www.tfn.org/religiousfreedom/biblecurriculum/texascourses/recommendations/>