

## Experts Debate Role of Religion in Public Discourse

by: Matt Wax-Krell, Newsletter Editor

As a variety of religious issues continue to swirl around the current presidential campaign, the timing could not have been better for a symposium on the separation of church and state. On May 3, CFAR and the University of Connecticut School of Law hosted the 11th Milton Sorokin Symposium on just that subject.

Dr. Heidi Hadsell, President of the Hartford Seminary moderated a debate

between two leading experts on the topic of "The First Amendment & The Separation of Church & State." Arguing for stricter separation was the Rev. Barry W. Lynn, Executive Director of Americans United for Separation of Church & State. On the other side of the debate, Professor Douglas W. Kmiec, the Caruso Family Chair in Constitutional Law at Pepperdine University, argued that there is a place for religion in the public discourse.

The two debated a variety of current issues, including the use of the phrase

"under God" in the pledge of allegiance, faith-based initiatives, and school vouchers.

Regarding the pledge of allegiance, Kmiec pointed to the history of our nation, stating that "you can't erase the fact that the founders had a profound religious belief." He also pointed out the mentions of God in the Declaration of Independence.

In response, Lynn noted that the "under god" phrase was not added to the pledge until 1954, which undercuts

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## Use Them Or Lose Them! Experts Tell Students They Must Exercise Their First Amendment Rights.

by: Catherine Brennan, Reporter

That is the message the eighth graders from Hartford Magnet Middle School and Milford Middle School received from CFAR's panel of experts at the 2004 Middle School Day. The theme was the Three Pillars of the First Amendment. Dr. Gene Baten moderated the event.

Katherine Patterson, author of *Bridge to Teribithia* and *The Great Gilly Hopkins* started the day by telling the students about the importance of the freedom to read and write. Patterson's books have been the subject of much controversy over the years and numerous schools and libraries have banned them. She described how she feels writing books that have been banned and how she came to write books that were banned.

She explained that her books are all based on events from her own life. The *Great Gilly Hopkins* was the result of her

experiences as a new foster parent and her own sense of failure that went with it. She feels that it is the job of authors to tell the truth, and she felt she could not honestly portray the life of a foster child without using colorful language.

Although seeing your books banned is difficult, Patterson told the students how glad she is to know that other children honestly relate to the character of Gilly in the book and how hard students and librarians have fought to keep the books in libraries.

John Brittain, lead counsel in the famous *Sheff v. O'Neill* case, spoke to the students about the second pillar, freedom of education. Using the anniversary of *Brown v. Board of Education*, Mr. Brittain engaged the students in a lively discussion about the *Brown* and *Sheff* cases and their respective legacies.

No subject was off limits in this discussion. Students heard an honest account of how far we have come and how far we have left to go in the quest for desegregation and equality in schools. This topic was especially of interest to the students, since both the Hartford Magnet

Middle School and the Learning Corridor (where the event was held), were the outcomes of the historic *Sheff* case.

Finally, Quinnipiac Law Professor Martin Margulies spoke on the third pillar,

students' freedoms. Professor Margulies addressed the issue of freedom of speech in the schools. Using the landmark case of *Tinker v. Des Moines Board of Education*, students learned the law, and then how that law is applied. Professor Margulies also told students that currently, free speech in schools is being cut back severely, and that

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# Students' Right to Criticize

by Jason Paul, High School Columnist

Complaints about school are as common as Seattle rain. Most people who went to high school likely could point to shortcomings of at least one of their teachers. However, while technology has created very broad First Amendment rights for almost everyone, it has also made it easier to attack. Such student criticisms are now available to a larger segment of the public, as students can post comments anonymously about their teachers online.

Should such speech be protected against censorship or subsequent disciplinary consequences? In this instance the public schools are the relevant state actors. Should they be permitted to punish students who use the Internet to post negative evaluations of their teachers? This question is particularly vexing because the advent of the Internet has made it easier to attack anonymously and viciously.

Nevertheless, with rare exceptions, teacher criticism should be protected speech. The reason for this is simple. Most student criticism stems from at least a legitimate source of frustration about school or the classroom that can help the teacher do his or her job better. Rather than responding with threats (such as the risk of detention) or attempts to shut off this source of

dialogue, teachers could attempt to learn from such websites in the areas their students believe they must improve.

Teachers can also simply avoid the discussion altogether or tune out anything they think is irrelevant. As with all things there are exceptions to a blanket rule permitting on-line attacks. In most cases, however, these exceptions are consistent with general guidelines and do not warrant additional limits on students' right to criticize.

An example of a basic guideline could be that what you cannot say on the radio, you probably should not be able to say to a teacher or about that teacher on-line. This amount of freedom will likely frustrate some teachers, but other teachers will understand that it is through dialogue that the educational process will improve. Thus, criticism on a website could lead to a conversation with school officials, but should rarely lead to a suspension of the students.

In the end, if students are writing about teachers it means they are thinking about school and their education and that should be music to any educator's ears. In the worst cases of petty criticism, nothing will be learned and teachers will simply be aggravated. Most times, however, there will be a grain of truth in what students say and then everyone will learn something.

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those ideas students might have been able to express in schools 25 years ago are likely to be censored today. He also told the students about cases that he has litigated for Connecticut students and that the only way to keep their own First Amendment rights as students is to "use them or lose them." In this age of censorship, Margulies remarked that students must speak out and challenge things they do not agree with.

The 2004 Middle School Day was an incredible success. Students engaged in an honest discussion that was itself a testament to the importance of the First Amendment. CFAR would like to thank this year's panels of experts for participating in this exceptional day.

## CFAR High School Writing Contest Award Winners

At the CFAR Symposium, Justice Richard Palmer announced the 2004 High School First Amendment Writing Contest award winners. Congratulations to the winners:

- 1st Place:** Colin Hay, Hall High School, West Hartford.
- 2nd Place:** Rebecca Giannattasio, East Lyme High School
- 3rd Place:** Tess Kohanski, East Lyme High School.

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the historical argument. He also believes that the pledge has become a "religious loyalty oath," impermissible under the First Amendment.

On the issues of faith-based initiatives and school vouchers, Kmiec and Lynn debated the constitutionality of federal money going to religious groups and schools. Kmiec believes that it is wrong to deny funds to groups providing social services merely because of their religious beliefs, and stated his belief that such action encroaches on the freedom of exercise of religion. However, Lynn had no problem with such groups receiving federal

funding, so long as they agree to not seek to convert, and hire the best people available for jobs, without discriminating against those of other religions.

The panel concluded with several questions from the audience, including one from a man who said that when he graduated from college in 1938, the Catholic Church had a policy of anti-Semitism. He spoke of facing such discrimination during job interviews.

Kmiec, who is a Catholic, responded, "My own church has spent the better part of a quarter century apologizing for something it can not apologize for."

Prior to the enriching panel, Justice Richard Palmer presented awards to high school students for their written

essays. Colin Hay of Hall High School in West Hartford won first prize with his essay on the historical underpinnings of the separation of church and state and its relation to current events. Rebecca Giannattasio of East Lyme High School captured second prize with her essay on her efforts to start a bible club at her school. Tess Kohanski, also of East Lyme High School, won third prize with an essay imagining life without the First Amendment.

Videotape or DVD copies of the event are available on the internet at Ct-N.com or by calling 860-246-1553 and asking for Kate Galin or Dominique Avery. Simply ask for a copy of the May 3rd "Separation of Church & State."

# The Center for First Amendment Rights Calendar

## July 2004

- Thursday, July 1, 2004: Start of fiscal year 2005
  - Any contributions for fiscal 2004 must be received by June 30, 2004
  - Complete planning of High School First Amendment Conference and funding applications
- Saturday, July 10, 2004: Review Corporate Town Program & special programs for funded schools
- Tuesday, July 20, 2004: Follow up on Corporate-Town program

## August 2004

- Wednesday, August 25: Mailing Party for the High School First Amendment Conference Invitations. Any volunteers-call Ethel at 541-3339: free supper is included

## September 2004

- Tuesday, September 7, 2004: Mailing of The First Voice, volume III, no. 1
- Wednesday, September 8, 2004: Complete planning of 2005 Middle School First Amendment Day
- Thursday, September 9, 2004: 4PM: Annual Meeting of Board of Directors
- Tuesday, September 14, 2004: Complete roster for Speakers Bureau for Fall dates

## October 2004

- Friday, October 1, 2004: CFAR's 2004 High School First Amendment Conference
  - all high school students in state welcome - by advance reservation. 860-541-3339
- Friday, October 8, 2004: Noon Executive Committee Meeting
- Monday, October 11-15, 2004: Follow up with Hall High, Tolland & Rocky Hill High

## November 2004

- Friday, November 2004: Possible workshop for teachers at the Social Studies Convention
- Wednesday, November 10 or 17: Junior or college First Amendment program
- Friday, November 12, 2004: Noon Executive Committee Meeting
- Monday, November 15, 2004: Mailing of The First Voice, volume III, no. 2

## January 2004

- Thursday, January 13, 2005: 4PM Board of Directors Meeting

## February 2005

- Friday, February 11, 2005: Noon: Executive Committee Meeting
- Saturday February 12, 2005: Mailing Party for High School Contest Announcements

## March 2005

- Friday, March 11, 2005: Noon: Executive Committee meeting
- Monday, March 14, 2005: Mailing of The First Voice, volume 3 issue no. 3
- Monday, March 21, 2005: Mailing of the Symposium invitations and Middle School Day

## April 2005

- Monday, April 4, 2005: due date for High School Contest entries
- Friday, April 15: Noon: Executive Committee Meeting;
- Friday, April 29, 2005: CFAR's 2005 Middle School First Amendment Day

## May 2005

- Monday May 2, 2005: 7PM Annual Milton Sorokin Symposium
- Tuesday, May 10, 2005: Mailing of The First Voice, volume 3 issue no. 4
- Friday May 20, 2005: Noon Executive Committee Meeting

## June. 2005

- Monday, June 6 2005: 4PM: Board Meeting
- Thursday, June 30, 2005: End of fiscal year 2005



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# The Impenetrable Wall?

by Jeffrey J. White,  
Editor Emeritus & Columnist

Having column space can be a liberating experience. It is almost reminiscent of the old saying, "The world is your oyster." It conjures up images of a classic movie, where a young gentleman steps off a train in a big city, his hat tilted back, the warm sun shining on his face. He can go in any direction, in pursuit of his dreams.

Writing an article about the First Amendment involves many of the same choices. Some choose to focus on a newly released case and the implications it has for the future. Others choose to stare into the past, with an aim of casting light on a forgotten decision or jurist from the sands of time. For purposes of this article, I have chosen the latter, in an effort to look anew at an age-old discussion, the separation of church and state.

As is widely known, the Establishment Clause of the First Amendment forbids excessive governmental entanglement with religion. Consistent with this "wall of separation," as coined by Thomas Jefferson, courts, under most circumstances, are also prohibited from becoming entangled with claims that require examination of decisions made by religious councils or tribunals that pertain to religious matters.

One of the first cases in Connecticut to address this principle was *Whitney v. The First Ecclesiastical Society in Brooklyn*, 5 Conn. 405 (1824), authored by then Chief Justice Hosmer. While the case was decided long before the Establishment Clause was applied to the states, it still serves to highlight the court's early recognition of the boundary lines that exist between civil and religious authorities.

The facts of *Whitney* are relatively straightforward. In 1756, the First Ecclesiastical Society in Brooklyn retained the Reverend Josiah Whitney as their pastor. As part of the agreement to "settle," the society agreed to provide him with a yearly salary. Whitney continued in this capacity until 1818, when due to failing health, he had to limit his duties. The society requested that he resign but he declined. As a result, the society refused to pay his yearly salary and even went so far as to prevent him from entering their meetinghouse to preach, pray or attend meetings.

As an initial matter, the Supreme Court concluded that the original contract to "settle," as it meant in those days, was a lifetime appointment and could not be extinguished at the will of the society. The more complicated question for the court to decide was whether the pastor, by act or omission, had forfeited his office. The society had maintained throughout the proceedings that Whitney had failed to

fulfill some of his pastoral duties, such as administering certain sacraments.

Before concluding that the court did not have jurisdiction to consider the matter, Chief Justice Hosmer nevertheless made his viewpoint well known: "Were it proper for me to express an opinion, I should not hesitate to say, that the above office was not forfeited, by anything appearing in the case. But on this subject I consider the question as not within my jurisdiction."

Accordingly, the Court recognized that "[t]he right conferred of performing the duties of a minister, as well as his ordination over a parish, are the acts of an ecclesiastical assembly; and an ecclesiastical tribunal, vested with powers, in such cases, is the proper [f]orum to enquire and determine whether his office is forfeited."

Ironically enough, however, the court was able to sidestep this issue, as the court found that the society had waived its right to review the errors of Whitney since it did not empanel an ecclesiastical tribunal to consider the matter.

Nevertheless, the importance of *Whitney* lies in its recognition of the limits of a court's jurisdiction when it pertains to matters of religion. That is, courts, in order to respect the wall of separation between church and state, must tread lightly when considering the decisions of ecclesiastical tribunals that pertain to religious matters.



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