

ANALYSIS AND EFFECT OF THE EDWARDS V. AGUILLARD DECISION ON THE
CONSTITUTIONAL BASES TO TEACH CREATION-SCIENCE AND CURRENT LEGAL
DEVELOPMENTS

Robert Russell Melnick
Attorney, Melnick & Schwebel, Youngs-
town, Ohio

ABSTRACT

This paper probes the Edwards v. Aguillard decision of the United States Supreme Court. The ruling does not forbid the teaching of creation-science in the public school classroom; it only prohibits state legislatures from mandating its introduction into the science curriculum under 'Balanced Treatment' laws. Individual teachers, school boards and districts remain free to introduce creation-science provided the information is presented in a secular fashion. Comparison of case-law and precedent reveals that the Supreme Court majority opinion of religious purpose is untenable. It is based not on adherence to legal procedure or the legal record but on the Court's subjective notion of creation as inextricably linked with Protestant Fundamentalism.

The decision, however, does not abrogate well-established constitutional rights to free speech, academic freedom, etc., if emanating from the individual teacher or school board. Analysis of case-precedents supports this conclusion. Finally, misinterpretation of Aguillard by the lower courts is displayed by the Webster v. New Lenox case. The current struggle of the ICR graduate school to maintain its science curriculum in the face of state hostility over its creation curriculum indicates increasing attempts by the evolutionist majority to censor the minority view on origins.

INTRODUCTION

This analysis serves to inform the reader of the scope of the U.S. Supreme Court decision in Edwards v. Aguillard and the legal/constitutional status to teach creation-science in the public school classroom subsequent to this ruling. Further, this paper analyzes current legal developments and their effect on the teaching of the creation model.

Contrary to popular notion, the Edwards v. Aguillard decision did not render illegal the teaching of creation-science in the classroom. Rather, it prohibited passage of legislation mandating the teaching of creation-science. This analysis then critiques the ruling in order to comprehend its scope.

The Court's finding of religious purpose and motivation by the legislators who sponsored and voted for this bill was utter speculation, prompted, as the ringing Scalia dissent points out, by the Court's bias against the very concept of creation. This prejudice blinded the Court to the factual disputes evident on the record before them (at the Summary Judgment stage the existence of factual disputes mandates that a case go to trial under federal procedural rules).

The constitutional right to teach creation-science after Aguillard remains intact, but the focus now must be on the individual teacher, school board and district. Rights of free speech/expression, academic freedom, and the right to receive information are bases to pursue under the First Amendment if one is denied the right to disseminate information on creation-science. The introduction of creation-science serves to enhance the science curriculum, thus satisfying the Tinker test.

One post-Aguillard case involving a social-studies teacher in Illinois has attempted to create an unfounded distinction between mentioning creation-science in a church-state setting, and teaching about it as science. It is now being appealed. Finally, the California Department of Education's de-approval of the ICR graduate school as a degree-granting institution serves to emphasize the well-entrenched establishment bias against creationism as a minority scientific view on origins.

ANALYSIS AND CRITIQUE OF EDWARDS V. AGUILLARD

Scope of the Decision

The long-anticipated outcome concerning the constitutionality of the Louisiana Balanced Treatment law culminated in a decision by the United States Supreme Court on June 19, 1987.(1) Despite anticreationist claims to the contrary,(2) the ruling was a narrow one and does not prohibit the teaching of scientific evidences for creation in the classroom. Rather, the decision refines how such teaching can occur.

Specifically, the High Court in Edwards v. Aguillard ruled that no state legislature through statute can require that creation-science be taught whenever evolution was presented.(3) The Court claimed that to mandate the teaching of both views on origins constituted a violation of the Establishment Clause based upon the statutory terms and legislative history of the "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act."(4)

However, the decision still permits passage of statutes allowing for the introduction of scientific information with a secular intent:

We do not imply that a legislature could never require that scientific critiques of prevailing scientific theories be taught...teaching a variety of scientific theories about the origins of humankind to school-children might be validly done with the clear secular intent of enhancing the effectiveness of science instruction.(5)

Presumably, if a state legislature passes a statute that does evince a secular and nonreligious purpose, then this ruling will not effect it. Further, as stated below, Aguillard does not implicate the constitutional right of instructors to voluntarily teach creation-science in the science classroom.(6) It only invalidates a state-sponsored law requiring the teaching of creation-science alongside of evolution-science.

Critical Commentary on Edwards v. Aguillard

Lemon v. Kurtzman test: In analyzing cases that may implicate the Establishment Clause, the Supreme Court since 1971 has developed a three-pronged test: "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 entanglement with religion.'"(7) This tripartite test on its face appears to be a balancing schema, i.e., if scrutinized legislation or activity benefits religion or has religious content incidentally, but primarily has a secular purpose and effect, presumably it satisfies the test. However, the Court has never applied the test as such.(8) In practice, where the issue of religion is even raised in an Establishment Clause context (as with the teaching of creationism), the High Court's use of the tripartite test has been too cumbersome to make fine distinctions between incidental religious purpose and effect versus primary secular purpose and effect.(9) Hence "...although it appears to be a balancing test, it operates more like an absolute test."(10)

Secular versus Religious Motive/Intent: Ignoring the voluminous record before them that pointed to a secular purpose by the Louisiana legislators in passing the Balanced Treatment Act, (11) the majority of the High Court chose instead to draw not upon the legal record before them, but again on their assumptions of what the motivations of the legislators who passed the bill must have been.(12) In effect, the majority supplanted their extrinsic and subjective biases for the record they are bound to follow - an ominous trend all the more heightened in impact because it is sealed with the force of judicial fiat.(13)

The majority flagrantly violated many of the High Court's own well-established rules in reviewing statutes with regard to determining legislative intent in Aguillard. First, the judiciary is required to review the intent, motive and purpose of the entire legislature in assessing motive.(14) Nevertheless, the majority opinion cites isolated remarks of Senator Bill Keith(15), and the concurring opinion focuses more on the 1980 bill that was not passed than the 1981 bill that was.(16) The general rule was supposed to be that even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing the legislative history.(17)

Secondly, a stated legislative purpose in a statute is to be presumed valid.(18) The sponsor of the bill, Bill Keith, and one of his expert proponents, Dr. Edward Bondreaux, emphasized repeatedly in the legislative hearings that the purpose of the bill was to advocate academic freedom.(19) This avowed secular purpose was reiterated at every hearing.(20) Despite a record replete with evidence of a secular purpose, the majority claims that the statement is a sham.(21) Such a conclusion is unfounded, indicating that a majority of the members of the U.S.

Supreme Court as constituted in 1987 were guided by their own predilections than a careful scrutinizing of the evidence before them on Summary Judgment.(22)

Mere mention of creation in late twentieth century America evokes images of Fundamentalist repression; the Scopes trial; bigotry, etc.--a knee-jerk reaction--to which the majority succumbs. As Justice Scalia states in his forceful dissent:

We have...no adequate basis for disbelieving the secular purpose set forth in the Act itself, or for concluding that it is a sham enacted to conceal the legislators' violation of their oaths of office. I am astonished by the Court's unprecedented readiness to reach such a conclusion, which I can only attribute to an intellectual predisposition created by the facts and legend of Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927)--an instructive reaction that any governmentally imposed requirement bearing upon the teaching of evolution must be a manifestation of Christian fundamentalist repression. In this case, however, it seems to me the Court's position is the repressive one.(23)

The Court's Finding of 'Religious' Purpose is Skewed: The Court's Establishment Clause jurisprudence centers around its understanding of a secular versus religious purpose, the first prong of the Lemon test above. Justice Scalia's dissent--that the ruling is a visceral one--is revealed in analyzing one Justice's formulation of the Lemon v. Kurtzman purpose requirement. Justice O'Conner's view is instructive. Her formulation seeks to uncover the government's actual purpose--is it to advance or disparage religious activity?(24) The focus is not on the mere presence of a secular purpose (e.g., the statutory reference to a secular purpose in the Louisiana Balanced Treatment law) but a probing to determine the actual impetus for passage of the legislation.(25) In Wallace v. Jaffree,(26) Justice O'Conner elucidated her construct of secular purpose as that which clearly is discernible as secular or religious by the judiciary versus a legislative 'sham':

I have little doubt that our courts are capable of distinguishing a sham secular purpose for a sincere one...(27)

The danger in this formulation is twofold. First, Justice O'Conner in her Jaffree concurrence and a majority of the Court in Aguillard, provide no concrete, objective method for discovering such a sham. Instead we are back to the gut, visceral feeling--I know it when I see it approach. This Scopes in reverse ruling totally disregarded that this was a Summary Judgment action,(28) precluding by definition judgment where there are genuine factual issues in dispute. Disputes about the religious versus secular motivation of the legislators, definition of statutory terms, expert affidavits re evidences supporting creation-science versus evolution and a host of other matters mandated reversal of the Summary Judgment granted the plaintiffs in the lower courts.(29) That the result was otherwise suggests that the course of this nation and its public policy, as reflected here at the highest level of the judiciary (with regard to the facts about origins taught in her public school classrooms) is thoroughly imbued with an evolutionary mind-set, predisposed toward naturalism as the only explanation for origins.(30)

Secondly, commentators have decried this 'gut-level' interpretation of secular purpose in the Lemon test above, because it is applied in a manner that is overly inclusive of religious purpose and underinclusive of a secular purpose.(31) Instead of focusing upon the secular purpose of neutralizing evolution or balancing the teaching of origins from a secular standpoint, the Aguillard majority underincludes the secular aspect, overincluding the state endorsement of religion element.(32)

Perhaps the most insidious example of this in application is claiming a religious purpose by the mere mention of the word 'creation.' (cf. definition of creation-science in Louisiana statute: "...the scientific evidences for creation and inferences from those scientific evidences. LA STAT. REV. ANN. §17:286.3 (West Supp. 1982)). Appellants repeatedly and with scholarly adroitness showed that use of the word 'creation' or 'Creator' did not translate into a religious purpose in contravention to the Establishment Clause.(33) Justice Scalia likewise at the oral argument in Aguillard,(34) and in his dissent establishes that to posit a creator is not synonymous with religious intent:

(T)o posit a past creator is not to posit the eternal and personal God who is the object of religious veneration. Indeed it is not even to posit the 'unmoved mover' hypothesized by Aristotle and other notably nonfundamentalist philosophers.(35)

An analysis emphasizing the secular purpose should have found compliance with the Lemon test supra, recognizing that the passage of the Louisiana Balanced Treatment act was to neutralize the exclusive teaching of evolution in origins and promote academic freedom.(36) However, the Aguillard majority dismisses the avowed basis for the act, terming the statutory definition

for Academic Freedom unworkable (Aguillard, 482 U.S. at 586 & n. 6) because the Act serves to diminish such freedom by requiring teachers to instruct in evolution and creation. It is as if the majority decides this in a vacuum, without any apparent knowledge of the rampant discrimination by the evolutionist establishment both within the public school setting,(37) and the scientific community as a whole.(38)

Justice Scalia's dissent makes clear that if the majority can decide to invalidate the law from its innate sense of the creation-evolution debate as opposed to the strict record before the court, then the majority cannot then determine to look at the statutory wording and find inherent discrimination on the face of the statute (i.e., protecting creation-science and not evolution-science), which obviously needed no protection in the current educational and scientific climate. Cf. Aguillard, *supra* at 630-32 ("La. legislators were told repeatedly that creation-scientists were scorned by most educators and scientists..."(39)). Query: Why else the need for balanced treatment? If both viewpoints needed protection, the law should have been called 'Mandated Instruction in Origins' or something similar but surely not "balanced". Emphasis was given only to the creation-science side of the ledger; after all, the creationists are the ones suffering the discrimination.(40) All this apparently escaped the 'gut' knowledge of the majority which defines Academic Freedom to justify their skewed decision. As Justice Scalia finds, Academic Freedom here simply means, freedom from indoctrination.(41)

CONSTITUTIONAL BASES TO TEACH CREATION-SCIENCE IN PUBLIC SCHOOLS ARE UNCHANGED BY EDWARDS V. AGUILLARD DECISION IF INDIVIDUALLY-INITIATED

Individual Constitutional Bases Remain Intact

Despite invigorated efforts by the anticreationist establishment to claim the teaching of creation-science in light of Aguillard is illegal in the classroom,(42) the right of the individual instructor, school board, or district to implement a creationist curriculum has not been legally abrogated by the Aguillard decision. The Aguillard majority acknowledges such in its references to teaching about a variety of scientific theories concerning origins from a secular perspective.(43) The voluntary, individual decision of a public school instructor to disseminate information about creation-science remains intact! Such rights flow from individually-centered constitutional bases,(44) not state legislation, the latter of which was the focus of the Aguillard decision.

These constitutional bases include the following. First, a First Amendment, free speech/expression right to impart information on creation-science on the part of the teacher (since there is inherent scientific content to creation-science(45)). There has been a judicial trend 'toward encouraging student exposure to a broad variety of viewpoints and ideas',(46) and a concomitant emphasis upon the free expression rights of teachers to teach ideas that are not endorsed by a majority vote of their colleagues.(47) Secondly, a right to freely explore and debate a subject under the heading of Academic Freedom is constitutionally-based and available to teachers and students alike, with the latter also being able to assert a right to receive information (which includes creation-science).(48)

Tinker Test

The standard used to measure whether the state can limit or suppress freedom of expression on public school premises (for teachers and students),(49) is that enumerated in Tinker v. Des Moines School District.(50) Unless the state can show a material or substantial interference with school work or discipline, free speech rights cannot be suppressed by school authorities. In the creation context, teaching about an alternative body of scientific information re origins hardly can be deemed an interference with the school curriculum or a threat to discipline. In all respects, it is an equitable balancing of the science curriculum that satisfies the Tinker standard. It is a genuine marketplace of ideas that the Supreme Court claims to be the prevalent understanding of the First Amendment.(51)

Aside from the establishment of religion issue (which is unfounded on the premise that creation-science is inherently scientific(52)), the state must show that it has a compelling interest to deny the introduction of creation-science information in the classroom.(53) The state has no compelling interest in teaching evolution or creation for that matter,(54) but if one is permitted to be taught than the other must be allowed under any equitable analysis of constitutional case-law.(55)

POST-AGUILLARD LEGAL STATUS (1987-1990)

Litigation

Since the Aguillard decision, there has been scant activity in the courts to pursue the teaching and disseminating of creation-science on a voluntary, individually-centered constitutional basis. Publicity has focused upon state and local-level textbook selection and science-cur-

riculum committees in various states,(56) to include creation-science teaching in the curriculum or as part of the content of science textbooks published. Litigation has been minimal.

One notable exception is Ray Webster v. New Lenox School District,(57) where a teacher in Illinois filed suit to disseminate information on creation. While Webster is the first post-Aguillard case to judicially test the extent of the Aguillard holding, the facts of the case are not precisely on point. Mr. Webster is a social studies instructor, so the decision of the court will not strictly apply to the teaching of creation-science within the science classroom.(58)

Mr. Webster was informed by a superior that the courts have forbidden teaching in creation and that he was to cease from such activity.(59) It is Plaintiff-Webster's contention that he is merely informing his students of an alternative scientific viewpoint without endorsing or advocating a personal belief in creation or evolution.(60) Since social studies is a required course in Illinois, and the issue of origins is the first chapter of the mandated curriculum, the subject of origins in this context cannot be avoided.

The district court ruled to dismiss plaintiff's claim, in an apparent attempt to avoid the constitutional issues and for that matter, a fair appraisal of the scope of Aguillard. The district court held that plaintiff Webster had never been denied the right to mention creation-science in an historical context of church-state relations as distinguished from teaching it as a science.(61) Apparently, the court by this ludicrous result, dilutes the effectiveness of any appeal to decide the ultimate issue of the constitutionality of teaching creation-science, and concomitantly gets the matter dismissed for the subject school district despite the latter's blatant violation of First Amendment rights.

California Department of Education Denies ICR Graduate School License to Grant Science Degrees

The most ominous legal development since the Aguillard decision centers around the efforts of anticreationist William Honig, California State Department of Education Superintendent to disenfranchise the graduate school at the Institute For Creation Research.(62) ICR, the pre-eminent creationist think-tank, has operated a degree-granting graduate school in the sciences since 1981.(63) At that time, as is required by the California Education Code,(64) the state superintendent and an onsite reviewing committee granted the ICR graduate school authority to grant science degrees which are taught from a creationist perspective. The required state license approval continued by the state reviewing committee through August, 1988.(65)

However, apparently buoyed by intense anticreationist lobbying against the graduate school,(66) Mr. Honig in an incredible political 'power play' (which obviously impinges upon the integrity of the reviewing committee) pressured one committee member to change his vote, resulting in denial of state approval.(67) The objections of the state committee were petty, evidencing a strong anticreationist bias with intent to deny a foregone conclusion. Without a state license to grant science degrees, the integrity of the ICR program, the ability of students to obtain all-important financial aid through government sources, etc., will be compromised(68) and the school will likely close.

The California Department of Education's dictating of the content of the science curriculum at ICR is another example of increasing government control and regulation of private education, ostensibly in contravention to the First Amendment as originally intended.(69) As of March, 1990, the state department of education has ordered the school closed unless ICR capitulates (which it will not and should not do) and recasts its science offerings in the name of 'religion' or 'creation'. ICR intends to litigate this matter in the appropriate administrative and judicial forums.(70)

CONCLUSION

It is clear that the scope of the Edwards v. Aguillard decision is narrow. However, unless public school administrators and teachers alike understand that the constitutional right to teach creation-science remains intact for the individual instructor and school board, the decision will have a chilling effect. School officials, not given to distinguishing legal decisions, will be more inclined to prohibit creation-science. Public school teachers and university instructors need to be armed with the facts and educate officials at school board hearings, conferences or other similar fact-finding forums. This would alleviate much of the misinformation that leads to litigation.

Post-Aguillard litigation, if Webster is at all an indication, is construing the decision too broadly against individual constitutional rights. The controversy currently raging against the ICR graduate school reveals the extent of the evolution mindset among the educational and scientific elite. To counter these on-going threats, creationists must press

their minority position on origins with increased vigor and determination.

REFERENCES

1. Edwards v. Aguillard, 482 U.S. 578 (1987).
2. See e.g. C. Norman, Supreme Court Strikes Down 'Creation-Science' As Promotion of Religion, 236 Science 1620 (June 20, 1987).
3. Edwards v. Aguillard, 482 U.S. 578 (1987).
4. LA. REV. STAT. ANN. §17:286.1, et seq. (West Supp. 1982).
5. Edwards v. Aguillard, supra note 1 at 593-94.
6. Melnick, R., Trends in Constitutional Law: The Right To Teach, Receive & Disseminate Creation-Science, Vol. I, PROCEEDINGS OF THE FIRST INTERN'L CONF. ON CREATIONISM (Basic & Educ. Sessions) at 167-75 (1986).
7. Lemon v. Kurtzman, 430 U.S. 602 at 612-13 (1971).
8. Valauri, The Concept of Neutrality in Establishment Clause Doctrine, 48 U. PITT. L. REV. 83 at 130 (1986).
9. Id. at 130-37.
10. Id. at 136.
11. See, Supreme Court Rejects Louisiana Law, Bible-Science Newsletter, Aug. 1987 at 1, 13.
12. Edwards v. Aguillard, supra note 1 at 611-12, 627-38 (Scalia J. dissenting).
13. See generally, R. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 143-85 (1990).
14. E.g. CPSC v. G.T.E. Sylvania, 447 U.S. 102, 118 (1980), see also, Appellants' Brief, Edwards v. Aguillard, supra note 1 at 43.
15. Edwards v. Aguillard, supra note 1 at 587; cf., Appellants' Brief, Edwards v. Aguillard, supra note 1 at 36-42 (as to the extent of State Senator Keith's testimony).
16. Edwards v. Aguillard, supra note 1 at 599-601.
17. See Appellants' Reply Brief, Edwards v. Aguillard, supra note 1 at 14.
18. See Witters v. Washington Dep't of Services For the Blind, 474 U.S. 481 (1986) at 485-86.
19. The completed legislation states on its face: "This subpart is enacted for the purpose of protecting academic freedom." LA. REV. STAT. ANN. §17:286.2 (West Supp. 1982).
20. Appellants' Brief, Edwards v. Aguillard, supra note 1 at 37-40 & nn. 176-84.
21. Edwards v. Aguillard, supra note 1 at 586-87. The High Court previously has engaged in similar sophistry in applying the purpose prong. Cf., Stone v. Graham, 449 U.S. 39 (1980)(per curiam)(where the ct. in deciding the constitutionality of posting the Ten Commandments in public school classrooms ignored the avowed secular purpose in its adoption--that of being the fundamental legal code of Western Civilization--determining the preeminent purpose to be plainly religious in nature).
22. Summary Judgment is a legal procedural device to bypass trial but only if there are no genuine issues of material factual dispute (FED. R. CIV. P. 56). However, the definition of creation-science in the legislation; the evidences for scientific content of creation-science; etc., were all principal issues in dispute which the Court chose to ignore.
23. Edwards v. Aguillard, supra note 1 at 634 (Scalia J. dissenting); similar to the dissent is the insightful analysis of this author's brother: "We who supported the law believed that the Supreme Court would at least have given our side a chance of having a full discussion of the statute's merits, and to consider those facts of creation-science that, as one of the courts of appeals judges had written in his dissent, stood without refutation in the testimony of expert witnesses. We were wrong. We were mistaken to assume that the majority of the nation's highest court would really understand these issues and principles...The majority opinion in the Louisiana case amounted to little more than a thin veneer of legal window dressing to cover the court's own base prejudices..." Melnick, J., The Supreme Court Decision & Luther Sunderland, Bible-Science Newsletter (Sept. 1988) at 1, 5 & 10.
24. See Lynch v. Donnelly, 465 U.S. 668 at 690 (1984)(O'Connor J. concurring).
25. Note, Edwards v. Aguillard: The Case of the Misplaced Purpose, 19 U. TOL. L. REV. at 733-34 (1988).
26. 472 U.S. 38, 67-81 (1985).
27. Id. at 75.
28. See generally, supra, note 22.

29. In fact, so intent was the majority of the High Court in finding a religious motivation for the passage of the legislation, that the expert affidavits submitted by Appellants in the fields of biology, biochemistry, theology and education were ignored. To reach this tenuous result, the Court only focused upon the perceived religious purpose of the statute at the time of its enactment and not the content or definition of creation-science.
30. C. HENRY, TWILIGHT OF A GREAT CIVILIZATION: THE DRIFT TOWARD NEO-PAGANISM 128 (Crossway Books 1988).
31. Valauri, supra note 8 at 132.
32. See generally, Edwards v. Aguillard, supra note 1 at 580-93.
33. Appellants' Brief, Edwards v. Aguillard, supra note 1 at 14-21; see also, Edwards v. Aguillard, supra note 1 at 629. One method of avoiding this problem is to term creation-science 'abrupt appearance'. Any prospective legislation that might be passed must use this or similar terminology on the face of the statute to conform to the requirements of Aguillard.
34. Official Transcript of Proceedings Before the Supreme Court of the United States (oral argument), Edwards v. Aguillard, Case No. 85-1513 at 34-36 (Anderson Reporting).
35. Edwards v. Aguillard, supra note 1 at 629-30 (Scalia J. dissenting).
36. Appellants' Brief, Edwards v. Aguillard, supra note 1 at 42; see also, Edwards v. Aguillard, supra note 1 at 626-32 (Scalia J. dissenting).
37. Edwards v. Aguillard, supra note 1 at 630 (Scalia J. dissenting).
38. BERGMAN J., THE CRITERION (Onesimus Publishing 1985).
39. Edwards v. Aguillard, supra note 1 at 630 (Scalia J. dissenting).
40. Id. at 630.
41. Id. at 628.
42. Taylor, Evolution Debate Started By Darwin, N.Y. Times, June 20, 1987 at 1, col. 4 & at 6, col. 1.
43. Edwards v. Aguillard, supra note 1 at 593-94.
44. Melnick R., supra note 6 at 167-72.
45. See e.g., Appellants' Brief, Edwards v. Aguillard, supra note 1 at 19-21.
46. Note, Free Speech Rights of Public School Teachers: A Proposed Balancing Test, 30 CLEV. ST. L. REV. 673, 679-80 (1981).
47. See e.g. Mailloux v. Kiley, 323 F. Supp. 1387 (D. Mass. 1971), aff'd, 448 F.2d 1242 (1st Cir. 1971)(district ct. said academic freedom not confined to those that can receive a majority vote from their colleagues).
48. Melnick R., supra note 6 at 169 & n. 26.
49. See Whitehead, Avoiding Religious Apartheid, 16 PEPPERDINE L. REV. at 239-42 (1989).
50. 393 U.S. 503 (1969).
51. Melnick R., supra note 6 at 168-69.
52. Appellants' Brief, Edwards v. Aguillard, supra note 1 at 32-50.
53. See e.g. Thomas v. Review Board, 450 U.S. 707 (1981); see also, Widmar v. Vincent, 454 U.S. 263 (1981).
54. See generally, Bird, Creation-Science & Evolution-Science in Public School: A Constitutional Defense Under the First Amendment, 9 N. KY. L. REV. 159 (1982).
55. See e.g. Virginia Bd. of Pharmacy v. Virginia Citizen's Council, 425 U.S. 748 (1976).
56. Mydans, Battle Over Teaching of Creation May Rumble Far From California, N.Y. Times, July 27, 1989 at A-15, col. 3. Note the experience of Mr. Paul Gerrish in teaching creation-science in Twin Falls, Idaho. See Bible-Science Newsletter, Jan. 1990 at 1-2, 5 & 15.
57. Ray Webster, et al. v. New Lenox School District No. 122, et al., Case No. 88-C-2328 (N.D. Ill., decided May 25, 1989).
58. Plaintiffs' Complaint, Ray Webster, et al. v. New Lenox School District, et al., supra note 57, par. 4.
59. Id., pars. 6-10 & R. Webster, et al. v. New Lenox School Dist., et al., supra note 57 at 2.
60. Plaintiffs' Complaint, R. Webster et al. v. New Lenox School Dist., et al., supra note 57, par. 11.
61. R. Webster, et al. v. New Lenox School Dist., et al., supra note 57 at 2.
62. Blakeslee, California Bars Degrees At Creationist School, N.Y. Times, Dec. 8, 1988 at A-25, col. 1-6.
63. State of California Attacks ICR, Bible-Science Newsletter, Oct. 1989 at 13.
64. CAL. (Education--Private Postsecondary Institutions) CODE §§94300, et seq. (Deering 1988).
65. See, supra note 62 at 13.
66. Id.
67. Id.

68. See, supra note 62 at A-25, col. 1-6.
69. See generally, D. DREISBACH, REAL THREAT AND MERE SHADOW (Rutherford Institute Report 1987).
70. Bill Honig's Office Formally Recommends Closure of ICR Graduate School, Acts & Facts, Mar. 1990, at 2-3.