The Phyllis Schlafly Report

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Judicial Supremacists Lash Out at Parents

When Hillary Clinton proclaimed that it takes a village to raise a child, many people didn't realize that she was enunciating liberal dogma that the government should raise and control children. This concept fell on fertile soil when it reached activist judges eager to be anointed as elders of the child-raising village.

The U.S. Court of Appeals for the Ninth Circuit ruled on November 2, 2005 that parents' fundamental right to control the upbringing of their children "does not extend beyond the threshold of the school door," and that a public school has the right to provide its students with "whatever information it wishes to provide, sexual or otherwise."

Instead of using the "village" metaphor, the judges substituted a Latin phrase that has the same effect. *Parens patriae* (the country as parent) was a legal concept used long ago by the English monarchy, but it never caught on in the United States and the few mentions of it in U.S. cases are not relevant to this decision.

The Ninth Circuit case, *Fields v. Palmdale School District*, was brought by parents who discovered that their seven- to ten-year-old children had been required to fill out a 79-question nosy questionnaire about such matters as "thinking about having sex," "thinking about touching other people's private parts," and "wanting to kill myself." The decision claimed that the purpose of the psychological sex survey was "to improve students' ability to learn." That doesn't pass the laugh test.

The parents were shocked and looked to the court for a remedy. No such luck. The three-judge Ninth Circuit panel unanimously ruled against the parents. One judge had been appointed by Jimmy Carter, one by Bill Clinton, and one by Lyndon B. Johnson. We live in times when judges (especially on the Left Coast) seize opportunities to create new law and new government powers even if they have to hide behind a Latin phrase of bygone years unknown to Americans.

The Ninth Circuit decision stated that "there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters to their children" and that "parents have no due process or privacy right to override the determinations of public schools as to the information to which their children will be exposed."

The school had sent out a parental-consent letter, but it failed to reveal the intrusive questions about sex. The letter merely mentioned concerns about violence and verbal abuse, adding that if the child felt uncomfortable, the school would provide "a therapist for further psychological help." That should have been a warning, but many parents don't realize that the schools have an agenda unrelated to reading, writing and 'rithmetic. Anticipating the new push to subject all schoolchildren to mental health screening, the decision gratuitously stated that the school's power extends to "protecting the mental health of children."

The court didn't bother to defend the nosy questionnaire itself, and said that public school authority is not limited to curriculum. The court made no mention of the need for informed parental consent or a right to opt out of an activity the parents deem morally objectionable.

The Ninth Circuit agreed with the lower court's broad ruling that the fundamental right to direct the upbringing and education of one's children does *not* encompass the right "to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs."

How did the Ninth Circuit circumvent "the fundamental right of parents to make decisions concerning the care, custody, and control of their children," which has been U.S. settled law for decades? The court referred to this as the *Meyer-Pierce* right because it was first explicitly enunciated in two famous Supreme Court cases of the 1920s, *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, and was reaffirmed as recently as 2000 in *Troxel v. Granville*.

The Ninth Circuit court said that since the government has put limits on parents' rights by requiring school attendance, therefore, the school can tell the students whatever it wants about sex, guns, the military, gay marriage, and the origins of life. The judges emphasized that once children are put in a public school, the parents' "fundamental right to control the education of their children is, at the least, substantially diminished."

How did the court feel empowered to put new limits on the settled law of *Meyer-Pierce* and give public schools the power to override parents on teaching about sex? Simple. The three liberal judges based their decision on "our evolving understanding of the nature of our Constitution."

Liberal judges have no shame in proclaiming their belief that our written Constitution is "evolving." In this case, the judges bragged that the Constitution has evolved to create the right to abortion, and then ruled that the evolving Constitution takes sex education away from parents and puts it "within the state's authority as *parens patriae*."

Judges Protect Mental Screening

The Ninth Circuit decision proclaiming that parents' rights over the education of their children terminate at "the threshold of the school door" has understandably stirred up a tremendous backlash. But in asserting the public schools' right to overrule parents, the decision in *Fields v. Palmdale School District* is much broader than the matter of a nosy questionnaire interrogating elementary schoolchildren about their assumed sexual activities.

The decision appears to be inventing a judicial argument for the new federally proposed mental health screening of all schoolchildren. In dicta wholly unnecessary to the decision, Judge Stephen Reinhardt casually asserted that the school's power extends to "protecting the mental health of children."

The school had sent a letter to parents stating that if a child felt uncomfortable about answering nosy questions, the school would assist in "locating a therapist for further psychological help." First-, third- and fifth-grade children would be provided with therapists to enable them to cope with a classroom activity.

An activist court has thus brought out in the open a trend that started years ago. When Samuel Hayakawa was a U.S. Senator urging passage of the Protection of Pupil Rights Amendment in 1978, he predicted that the schools were succumbing to "a heresy that rejects the idea of education as the acquisition of knowledge and skills . . . [and] regards the fundamental task in education as therapy."

One of President George W. Bush's first initiatives was to create the New Freedom Commission on Mental Health. The Commission issued its report in 2003 and some of its recommendations are now being implemented by SAMHSA (Substance Abuse & Mental Health Services Administration).

SAMHSA proudly asserts that its goal is a "fundamental transformation" of the mental health system. SAMHSA says that "the word transformation was chosen carefully" because it empowers new federal action in "policy, funding, and practice, as well as for attitudes and beliefs."

The federally funded activities announced on SAMHSA's website are awesomely comprehensive and expensive. SAMHSA is planning "a national effort focused on the mental health needs of children and early intervention for children identified to be at risk for mental disorders."

Ask yourself: How are these federal bureaucrats going to "identify" children at risk, and where will "early intervention" take place? The original report of the New Freedom Commission was blunt in stating that the plan is to make the public schools "partners," and conduct "routine and comprehensive" mental health examinations linked with "state-of-the-art treatments" using "specific medications."

As a result of grassroots opposition, SAMHSA now denies that the plan is universal or mandatory, but it's difficult to see how else they can achieve their national goal of "transformation."

TeenScreen is a program developed by Columbia University to screen young people for mental illness because the United States is alleged to be suffering a "crisis in child and adolescent mental health." The TeenScreen program brags that it is recognized by the President's New Freedom Commission on Mental Health as a model program and has been used in 43 states (but SAMHSA does not mention it).

In a Mishawaka, Indiana high school, 15-year-old Chelsea Rhoades was given a TeenScreen exam, after which she was told she was suffering from obsessive-compulsive disorder and social anxiety disorder. This was based on her responses that she liked to help clean the house and she didn't like to "party" very much. Chelsea was told that if her condition grew worse, her mother should bring her to the Madison Center for treatment.

Chelsea's parents are suing the school, and we hope they don't end up in the court of a judge like Stephen Reinhardt. According to Chelsea, a majority of the students who took the TeenScreen exam were told they suffered from some sort of mental or social disorder.

A study by Harvard University and the National Institute of Mental Health released in August 2005 claims that 46% of all Americans will, at some point in their lives, develop a mental disorder. Such an extraordinary statement by so-called experts indicates that mental diagnoses are unscientific, and the people pushing screening of all schoolchildren are, well, probably crazy — or are shilling for the manufacturers of the psychotropic drugs that will be prescribed for kids who flunk mental-health screening.

The Protection of Pupil Rights Amendment, which was reaffirmed in the No Child Left Behind Act, prohibits schools from interrogating students about "mental or psychological problems" without prior informed written parental consent. The Department of Education has sent a letter to every school superintendent setting forth the school's obligations.

Congress should make compliance with the law about parents' rights a condition of federal funding to schools just like other civil rights requirements. House Judiciary Committee Chairman James Sensenbrenner (R-WI) emphatically stated,

"It is not, and should not be, the role of government to subject children to arbitrary mental health screenings without the consent of their parents." Right on, Rep. Sensenbrenner!

Ninth Circuit Federal Judge Stephen Reinhardt, who wrote the opinion in *Fields v. Palmdale* asserting that parents have no rights in public schools, was appointed by Jimmy Carter in 1980 and is probably the most supremacist judge in America. This is only the latest example of his sweeping liberal decisions. In *Silveira v. Lockyer* (2002), Reinhardt's 70-page opinion discussed the Second Amendment at length and asserted that there is no individual right to keep and bear arms, citing with approval the bogus research of Michael Bellesiles. (A few weeks later, Reinhardt issued an amended opinion omitting the references to Bellesiles.)

Reinhardt is married to Ramona Ripston, who has been executive director of the ACLU of Southern California since 1972, was a cofounder of NARAL in 1969, a leader in People for the American Way, and a longtime political associate and appointee of Los Angeles Mayor Villaraigosa. Ripston was responsible for forcing Los Angeles County to remove the tiny cross from its seal, and she led the initial court victory attempting to stop the 2003 recall of Governor Gray Davis based on a phony argument about voting machines (which the full Ninth Circuit reversed). Ripston is Reinhardt's third wife and he is her fifth husband.

PPRA Can Stop School Mischief

The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. §1232h; regulations: 34 CFR Part 98), passed in 1978, states that schools may not interrogate students about "political affiliations or beliefs of the student or the student's parent; mental or psychological problems of the student or the student's family; sex behavior or attitudes; illegal, anti-social, self-incriminating, or demeaning behavior; critical appraisals of other individuals . . .; religious practices, affiliations, or beliefs of the student or student's parent; . . ." **without prior informed written parental consent**.

The public school system and the National Education Association have bitterly — and in most cases effectively — fought enforcement of this law.

Eagle Forum has always been a leader in the passage, the writing of regulations, and the attempted enforcement of this important law. PPRA was the subject of Phyllis Schlafly's best-selling book *Child Abuse in the Classroom* (1984), and is a major motivation for Eagle Forum's *Education Reporter* (subtitled "the newspaper of education rights"), published monthly since 1987.

Enforcement of PPRA was strengthened in the No Child Left Behind Act passed in 2002, and the Department of Education's Family Policy Compliance Office sent notice to this effect to all school superintendents. The challenge is to require schools to obey the law.

The 'Village' Is Taking Over

The right of parents to authority and autonomy in the rearing of their children has always enjoyed consensus in the United States. This principle — that "parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them" — was unanimously reaffirmed by the U.S. Supreme Court in 2000 in *Troxel v. Granville*.

Over the past 30 years, there has been a steady erosion of this fundamental right by liberals who believe that various so-called experts are better able to make decisions about children than mere parents. These experts can be teachers, school counselors, pediatricians, psychiatrists, social workers, custody evaluators, or judges. This denial of the fundamental role of parents is illustrated by the slogan "it takes a village to raise a child."

Public schools have been taking over many responsibilities traditionally in the domain of parents such as providing meals, health care, and pre-kindergarten services. Public schools notoriously assert their right to override parental decisions about the assignment of books that parents find immoral or profane, the use of privacy-invading questionnaires, the teaching of sex and evolution, the provision of contraceptives and abortion referrals, the use of school counselors, and demands that children be injected with vaccines or put on psychotropic drugs.

This widespread campaign to give the "village" (speaking through the public schools or the family courts) — instead of parents — the authority to make major decisions about the care, upbringing and education of children is taking place despite the fact that no scientific basis exists for "village" methodologies, for the tests used, or for the recommendations and decisions made. There is no agreement among professionals on how to conduct a proper examination, what standards to use if any, or what should go into any assessment. The reports are not scientific findings but expressions of personal preference. Often the practices are wrapped in the expression "the best interest of the child," but the use of people other than parents to determine the best interest of a child cannot be justified by science, law, morality, or common sense.

The erosion and denial of parents' rights by the public schools is similar to what has been happening in family courts, *i.e.*, the use of persons other than parents to make major decisions about the care and upbringing of children. Court-appointed evaluators purport to judge parents' parenting capacity and determine custody. *Scientific American Mind* (October 2005, p.65-67) published a paper by psychologists Robert E. Emery, Randy K. Otto and William O'Donohue, entitled "Custody Disputed," which states: "Our own thorough evaluation of tests that purport to pick the 'best parent,' the 'best interests of the child' or the 'best custody arrangement'

reveals that they are wholly inadequate. No studies examining their effectiveness have ever been published in a peer-reviewed journal. . . . Court tests that expert evaluators use to gauge the supposed best interests of a child should be abandoned. . . . We believe it is legally, morally and scientifically wrong to make custody evaluators de facto decision makers, which they often are because judges typically accept an evaluator's recommendation. . . . Parents — not judges or mental health professionals — are the best experts on their own children. We are simply urging the same rigor that is applied to expert testimony in all other legal proceedings."

'Village' Impudence in Massachusetts

David Parker of Lexington, Massachusetts was arrested on April 27, 2005 after insisting to school officials that under Massachusetts state law he had a right to be notified in advance about the human sexuality curriculum, and to have an opportunity to opt out his kindergarten son from any discussion of homosexuality. He refused to leave the school meeting without assurance that his request would be honored.

The school retaliated by having Parker arrested for criminal trespassing. He was handcuffed, jailed overnight, and banned from school property. He steadfastly maintained that he had committed no crime. The Parker case caused a great local uproar.

David Parker objected to the book called *Who's In a Family?*, which his kindergarten son brought home from school in a "Diversity Book Bag." The book by Robert Skutch illustrates same-sex couples and contains descriptions about them, such as "Robin's family is made up of her dad Clifford, her dad's partner Henry, and Robin's cat Sassy." It is listed on the book list published by the Gay Lesbian and Straight Education Network.

The school superintendent ordered all teachers **not** to notify parents in advance when discussing homosexuality because they are just teaching about diversity, citizenship and tolerance, and he said, "Parents can't pick and choose what they want their kids to study." Most parents consider this attitude an arrogant intrusion into the privacy of family values and parental rights.

Although the Massachusetts district attorney announced on October 20 that David Parker would not now be prosecuted for criminal trespassing, he remains under pretrial probation for a year and is forbidden to go on school property. The school still maintains its right to teach students whatever the school wants and without parental consent.

Congress Starts to Hear from Parents

On November 16, 2005, the House by 320-91 passed House Resolution 547 introduced by Rep. Tim Murphy (R-PA). The resolution doesn't do anything, but it does indicate that Congressmen are starting to understand that we cannot live under the unconstitutional notion that whatever some judge rules is "the law of the land." The lengthy resolution states in part:

> . . . the United States Court of Appeals for the Ninth Circuit deplorably infringed on parental rights in *Fields v. Palmdale School District*. . . .
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> Whereas in *Meyer v. Nebraska* (1923) the Supreme Court recognized that the liberty guaranteed by the 14th amendment to the Constitution encompasses "the power of parents to control the education of their [children]";
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> Whereas the Supreme Court in *Pierce v. Society of Sisters* (1925) . . . emphasized that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations";
>
> Whereas in *Wisconsin v. Yoder* (1972) the Supreme Court acknowledged that "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. . . . The duty to prepare the child for 'additional obligations', referred to by the Court [in *Pierce*] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship";
>
> Whereas a plurality of the Supreme Court has stated, "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children" (*Troxel v. Granville*, 2000).
>
> Whereas the rights of parents ought to be strengthened whenever possible as they are the cornerstone of American society: Now, therefore, be it
>
> Resolved, That it is the sense of the House of Representatives that — the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions . . .

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