

While each program costs the district \$300 to \$500 to create, sales to other districts are substantial. These programs are now being used in thousands of classrooms in the United States and Canada at a modest cost of \$2.50 within

the state and \$9.95 outside, with all proceeds going to additional software development. Plans are to work through a distributor in the future.

The greatest advantage is programs that closely respond to local curriculum

goals rather than adopting less specific commercial products at a much higher cost.

Andrew Ragan, "Marketing Your Own Software," *Electronic Learning* 30 (October 1982): 28, 30.

Law

PATRICIA M. LINES

School Prayer Decisions

In 1982 school prayer in public schools led to considerable judicial activity throughout the nation. Here are the highlights of this activity.

- In early 1982 the Supreme Court struck down a Louisiana law providing for voluntary prayer in the schools, following the precedent it established in the 1960s in *Treen v. Karen B.* 102 U.S. 1267 (1982).

- In October, federal Judge L. Clure Morton voided a similar Tennessee law that called for a minute of silence for "meditation or prayer or personal beliefs." The case is *Beck v. McElrath*, 548 F. Supp. 1161 (M.D. Tenn. 1982). The state plans an appeal.

- Student-initiated group prayer was again an issue. Notably, the Fifth Circuit struck down a policy of the Lubbock, Texas, schools that permitted such prayer before or after school. The case questions whether high schools are subject to the 1981 Supreme Court decision prohibiting university officials from refusing space to students who wished to hold a religious meeting, when space was made available for other purposes. The Texas case is not the right case to settle this issue, however, as the prayer meetings were apparently an extension of clearly unconstitutional past policies, including evangelical assemblies, prayer broadcast over school communications systems, and distribution of Gideon bibles. The school district has asked the U.S. Supreme Court to review the case. The case is *Lubbock Civil Liberties Union v. Lubbock Independent School District*, 660 F. 2d 1038 (5th Cir. 1982).

- In a widely publicized case, federal district court Judge W. Brevard Hand voided a law championed by former Alabama Governor Fob James, who at one point risked contempt of court

charges for urging citizens to ignore court orders on school prayer. The invalid law would have allowed teachers, including college professors, to "lead willing students in prayer," and it suggested a prayer written by the governor's son, a law student:

Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen.

Judge Hand also voided a second law, effective since April 1981, that allowed teachers to open each class with "a period of silence not to exceed one minute in duration . . . for meditation or voluntary prayer." Hand upheld a third law that required elementary school teachers to announce "that a period of silence . . . shall be observed for meditation . . ." at the start of the school day. The case is *Jaffree v. James*, 544 F. Supp. 727 (S.D. Ala. 1982).

- More litigation on school prayer is under way. A moment of silence has been approved by the New Jersey legislature, which overrode a veto from Governor Kean. The New Jersey Civil Liberties Union filed suit. As of mid-January, the Governor and Attorney General have refused to defend the moment of silence law, while the legislature considered whether to obtain special counsel. If the suit prevails, it will be the only court decision voiding a law that provides for a moment of silence alone with no mention of prayer. If the law is voided, the court will most likely base its decision on a finding of unlawful purpose, citing statements of sponsors and other legislators. The Supreme Court has said that a law with the purpose of promoting religion is invalid, but rules of statutory construction normally prevent a court from looking beyond the terms of the statute, where its meaning is plain.

- In December a federal district judge, citing a state constitutional provision lodging curriculum decisions with the

state board of education, struck down Louisiana's scientific creationism law. Another Louisiana case, brought in a different federal court, was dismissed on grounds that the issues raised in that court belonged in state court. The cases are *Aquillard v. Treen* and *Keith v. Louisiana Department of Education*, no. 81-989-B, Dec. 20, 1982. Appeal is planned in *Aquillard*.

- An Iowa teacher recovered \$300 damages for "emotional distress" and breach of his first amendment rights because of exposure to Christmas and Easter assemblies in *Abramson v. Anderson*, in the federal district court for Iowa.

- The South Dakota Supreme Court has upheld the firing of a teacher who allegedly spent too much time teaching the biblical theory of creation. The court bases its decision on findings of fact from a lower court, which were based on an administrative review and which indicated that the teacher failed to follow repeated written and oral instructions from his board to give more time to basic biology instruction and less to discussion of evolution and creation. As a concurring judge saw it, the teacher "wanted to be a preacher, not a teacher." The case is *Dale v. Board of Educ.* 316 N.W. 2d 108 (1982).

Note to readers: The authors of these columns welcome feedback and contributions. Address items to Editor, Educational Leadership, 225 N. Washington St., Alexandria, VA 22314.

Robert C. McKean and Bob L. Taylor are both Professors of Education, University of Colorado, Boulder.

William J. Stewart is Associate Professor of Education, The University of Northern Iowa, Cedar Falls, Iowa; and Conrad F. Toepfer, Jr., is Associate Professor, Department of Learning and Instruction, State University of New York at Buffalo, Amherst.

Patricia M. Lines is Director, Law & Education Center, Education Commission of the States, Denver.

Copyright © 1983 by the Association for Supervision and Curriculum Development. All rights reserved.