Antievolution Rules Are Unconstitutional

The Texas attorney general has said that the state's textbook antievolution rules violate the First Amendment; creationists will fight the opinion

The long-standing and influential Texas rules that mandate a highly circumscribed presentation of evolution in school textbooks have been dealt what could be a fatal blow by the state's attorney general, Jim Mattox. In an opinion solicited by state senator Oscar Mauzy, Mattox stated on 12 March that "The rules of the State Board of Education, concerning the subject of evolution, fail to demonstrate a secular purpose and are therefore in contravention of the First and Fourteenth Amendments to the United States Constitution."

The rules, which have been part of the Texas Administration Code for a decade as a result of local creationist pressure, have enforced a substantial diminution in the treatment of evolution in textbooks adopted by the state, to the point in some cases where the word itself does not even appear. And as Texas represents about 10 percent of the nation's textbook market, publishers have typically geared their output to what is acceptable in the Lone Star State.

The attorney general's opinion, which is currently being scrutinized by lawyers at the Texas Education Agency, comes at a time of mounting debate and political acrimony over the wisdom of the rules. And the timing is crucial, because selection of textbooks to be used during the next 6 to 8 years is to take place through the summer and fall. "Mattox's opinion will give many people the courage to try to reverse the antiscience, antievolution trend that has operated here," says Michael Hudson of People for the American Way, an organization founded in 1980 by Norman Lear and others to protect First Amendment rights.

The rules are several, but the core of them is the following: "Textbooks that treat the theory of evolution shall identify it as only one of several explanations of the origins of humankind and avoid limiting young people in their search for the meaning of their human existence" and " . . . each textbook must carry a statement on the introductory page that any material on evolution is presented as theory rather than fact."

Richard Arnett, a lawyer for the Texas Education Agency told *Science* that "The rules are not unconstitutional, because they seek neutrality and accuracy in science education," an argument he made to the attorney general in a long memorandum. Nevertheless, textbook publishers have come under tremendous pressure through the past decade as creationists have cited the rules in their protests, many of which proved to be successful. For instance, the sentence "No one knows exactly how people began raising plants for food instead of searching out wild plants . . ." was changed because of the following objection: "The text states theory as fact, leaving no room for other theories, such as the Biblical account of Cain as a farmer." In another case the statement that "The great mountain ranges of the world were not all formed at the same time" was modified because of the following objection: "The text presents theory as fact. Many people do not believe the earth is as old as implied here."

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In addition to many hundreds of such examples of detailed changes, Gerald Skoog, of Texas Tech University, has recorded a reduction in the coverage of evolutionary issues in most school texts since the mid-1970's, by more than half in some cases. Moreover, "Statements indicating that biologists support the validity of evolution have become very modest and almost nonexistent in textbooks published since 1980," says Skoog, who has detailed the dilution.

Although most textbook publishers are very defensive in admitting that they bend in the creationists' wind, some give a clear indication of the power of this lobby group. "If [the Texas officials] back us up against a wall and say, 'You either take it out or you won't sell your book in Texas,' then we'll take it out," acknowledges Felix Laiche of Laidlaw. A Follett Publishing Company spokesman concedes that "If we couldn't sell a book [in Texas] without creationism in it, I imagine you'd see it there."

The deterioration in standards of evolution coverage consequent to this publishing attitude resulted in the rejection in 1982 of two biology books by the New York City Board of Education. One of them was criticized because it did "not state that evolution is accepted by most scientists today, and presents special creation without characterizing it as a supernatural explanation that is outside the domain of science."

Attorney General Mattox's opinion on the textbook rules was clearly guided by the decision written by Judge William Overton in the Arkansas creationist trial, in which the state's "balanced treatment" law was declared unconstitutional in January 1982. For instance, Mattox says that in order to evaluate the rules one must look not just at their wording but also at their history.

The seeds of the rules were planted in August 1973 when Mrs. Mel Gabler demanded in a letter to the Commissioner for Education, and in subsequent testimony to the state board of education, that he " . . . either included equal space . . . FOR special creation, OR delete all evolutionary dogma." Instead of enacting an equal time provision that Mrs. Gabler and her husband requested, the board drew up the infamous rules, which later were modified just slightly. The board's action, according to the minutes of a subsequent meeting, "was satisfactory to the Gablers." This, and the tone of the debate of the issue at the time and in later years, clearly shows the origin of the rules to be nonsecular. The Gablers and other creationists are, incidentally, careful not to use the phrase "special creation" nowadays.

In view of this history, the rules appear to fail the first of the three-pronged test required when a law is suspected of violating the establishment clause of the First Amendment. In order to pass the test laws must have a secular purpose, must neither advance nor hinder religion in their primary effect, and must not foster excessive government entanglement with religion. Failure on any one test is sufficient for a ruling that the law is unconstitutional.

Even if the rules' history did not imply a nonsecular purpose, the wording certainly does, ruled Mattox. The fact that the rules are concerned with just one area (evolution) of just one science (biology), and that special attention is given to just one aspect of that area (human origins), "can be explained only as a

response to pressure from creationists." In addition, noted Mattox, "The 'meaning of human existence' is not the stuff of science but rather, the province of philosophy and religion. By its injection into the rules language which is clearly outside the scope of science, the board has revealed the non-secular purpose of its rules."

The attorney general's opinion is, as State Board of Education chairman Joe Kelly Butler is quick to point out, only that—an opinion. There is no statutory requirement that agencies must follow attorney general's opinions, though there is substantial precedent. The board would, however, be in a difficult position if it chose to ignore it. From a very practical point of view, if litigation were brought against the board, the attorney general would not be in a position to defend, as would normally be the case. In which case the board might incur considerable expense in hiring outside lawyers, in addition to attracting a great deal of political unpopularity. Hudson says that People for the American Way will bring suit if the board fails to repeal the rules at its mid-April meeting.

The state textbook committee begins hearings on possible adoptions in July, but texts will be available several months earlier. If the rules have been repealed, Hudson expects committee members, who are drawn from state educators, to be in a strong position to reject offerings that are considered weak on evolution, just as the New York committee did. And, unlike in previous years, committee hearings will not be restricted to protests against books, which process has been dominated by the Gablers; positive comments from scientists and educators will be heard too, a change in procedure secured by intense lobbying by People for the American Way. If the rules are not appealed, People for the American Way will file for delay of textbook selection by injunctive relief, until the merits of the case are settled in court.

Even if the rules are taken off the books, says Hudson, the board's activities will have to be closely monitored. Chairman Butler has been a strong proponent of the rules, in spirit and letter. According to board procedure, decisions to accept or reject the textbook committee's recommendations can be made without explanation. "If we want to reject a book because we don't like the way someone parts his hair, that's our prerogative," said Butler at a hearing last May. "We've never had to tell anyone why we don't like a book and that's the way it's going to be as long as I'm chairman."—**ROGER LEWIN**

Reagan Intends to Resist Congress on ASAT Treaty

Last fall, there was surprising unanimity when the Senate approved legislation requiring the Reagan Administration to certify, by this spring, that it is "endeavoring in good faith to negotiate with the Soviet Union a mutual and verifiable ban on antisatellite [ASAT] weapons." As a result, a good many legislators will be disappointed when the Administration formally responds that no such negotiations are anticipated because an ASAT ban is unverifiable.

This statement, which is due by 31 March, has not yet been officially released, but the latest draft is said by informed sources to reflect the Administration's unanimous view that the difficulties of verifying compliance with a ban on ASAT possession are so great as to render negotiations useless. As Richard Perle, an assistant secretary of defense for international security policy, recently told the Senate Armed Services subcommittee, "we cannot now foresee the means of verification" primarily because the diminutive size of an ASAT makes it easy to conceal, either on the ground or in space. Even a ban on ASAT testing would be too difficult to monitor, he said, because various components of a full-fledged system could be tested surreptitiously.

This position puts the Administration at odds with a panel of expert scientists convened last year by the Union of Concerned Scientists (*Science*, 28 October 1983, p. 394), and with the Senate Committee on Foreign Relations, which concluded last November that "the failure to pursue space arms limitations could be a catastrophic mistake" and that verification was a difficult problem which "can only be resolved at the bargaining table." Various committee members say they intend to seek the elimination of funds for production and testing of the existing U.S. ASAT during congressional deliberations on the annual defense authorization and appropriations bills.

The Administration, of course, has different plans, as evidenced by the latest annual report issued by Richard DeLauer, the Pentagon's top scientist. "Ambitious tests are planned this year" to demonstrate the capability of the present ASAT, his report says, adding that "we have directed a comprehensive study to select a follow-on system with additional capability to place a wider range of Soviet satellite vehicles at risk."—**R. JEFFREY SMITH**

House Panel Denies Exception for Drug

The House version of the National Organ Transplant Act (H.R. 4080) has emerged from the Ways and Means health subcommittee minus what has come to be called the "cyclosporine amendment." The deleted provision would have extended Medicare coverage to include payment for long-term use of immunosuppressive drugs that are deemed essential to transplant patients' survival. One of the leading immunosuppressants is cyclosporine.

Transplant patients require immunosuppressant therapy indefinitely. Opponents of the cyclosporine amendment argued that it would break the prevailing precedent under which Medicare pays for drugs only while a patient is in the hospital. There is a statutory prohibition against payment for self-administered drugs.

Cyclosporine became the focus of dispute largely because it is substantially more costly than many other immunosuppressant drugs. One estimate put the cost of use of the drug by a kidney transplant recipient at $6000 a year. Representative Henson Moore (R–La.) in opposing the proposal said it would cost the government $120 million over 4 years for all Medicare recipients who have received transplants.

In addition to objections based on precedent and cost, opponents of the change also question whether cyclosporine, which is made by Sandoz, is clearly superior to other immunosuppressant drugs. Subcommittee staff members cite three reports indicating that kidney transplant patients using the drug showed only marginally better results.

The matter is far from settled, however. Cyclosporine has made a substantial impact in the organ transplant field in the past 2 years, being credited by some, for example, with a near doubling of the 1-year survival rate of