Creationism Case Argued Before Supreme Court

In a case that will have a major influence on the future impact of creationism in public schools, the U.S. Supreme Court recently heard arguments for and against the scientific and secular nature of creation-science

AFTER 5 years of a somewhat checkered history of litigation the Louisiana Creationism—or the "Balanced Treatment for Creation-Science and Evolution-Science"—law finally found its way to the Supreme Court of the United States, where 1 hour of oral argument was heard on 10 December. After the submission of hundreds of pages of formal briefs earlier in the year, those oral arguments centered principally on the meaning of words.

For Wendell Bird, the attorney for the state of Louisiana, which ultimately wants to have the balanced treatment law upheld, the words of the statute are technical and can only be interpreted in the context of a full trial in federal court where the merits of creation-science can be weighed. So far the Louisiana law has been declared unconstitutional on summary judgment only, not by full trial. Given the benefit of a full trial, Bird argues, creation-science will be seen to be science and not religion, and the Louisiana law would therefore not violate the Establishment Clause of the Constitution. Bird therefore asked the justices to reverse the previous summary judgment and thus make way for a trial on the merits of the case.

For Jay Topkis, a New York lawyer associated with the American Civil Liberties Union (ACLU), which represents a consortium of Louisiana educators, parents and religious groups opposing the balanced treatment law, the words of the Louisiana statute are plain enough for anyone to understand and require no further clarification. Creation-science, he argued, is simply Genesis in the false guise of science and is therefore inescapably religious. The summary judgment declaring the statute unconstitutional should be affirmed by the court, argued Topkis.

By now the justices will have cast their votes, but drafting the decision and the probable accompanying dissent will take several months, and the announcement is expected some time between April and July, when the current term comes to an end.

The route to the Supreme Court for Louisiana's Creationism law was tortuous.

The act became law in July 1981, and soon afterwards the Louisiana attorney general filed suit asking a judge to declare the law constitutional. A federal judge dismissed this suit, saying that the court could not make a such judgment on a statute that had come onto the books in a legitimate manner: the court could only respond to a complaint that the statute was unconstitutional. Next, following a suit by educators, parents and religious groups filed by the ACLU, a judge declared that the law violated the Louisiana constitution by usurping the State Board of Education's right to devise a curriculum, a decision that was then overturned by the Louisiana Supreme Court.

A Louisiana creationism statute that has been ruled unconstitutional by a lower court is now before the Supreme Court. A decision is expected this spring.

In January 1985 a federal judge handed down a summary judgment in response to another suit by the ACLU, saying that creation-science is in fact religion and therefore the statute violated the U.S. Constitution. The decision was affirmed in July on appeal to three judges of the Fifth Circuit, and a further request to have the case reheard was turned down in December 1985 on an eight-to-seven split of a panel of 15 Fifth Circuit judges. Frustrated by the lack of a full trial on the merits of the case at any point in this saga, and encouraged by the vigorous dissent of the seven judges, the law's supporters took their case to the Supreme Court at the end of December 1985, asking for reversal of summary judgment and a trial in federal court. In May the Supreme Court agreed to hear the case.

The Louisiana Creationism law, like the law in Arkansas that was judged unconstitutional after full trial in December 1981, had been drafted by creationist activist Paul Ellwanger. Both laws require equal treatment of evidence for creation and for evolution, if either is taught. The difference between the two laws, however, is that the wording in Louisiana's draft law had been trimmed and honed so as to make it less obviously religious in tone and therefore less vulnerable to legal challenge. However, the changes failed to impress federal judge Adrian Duplantier, who declared the law unconstitutional without trial in January 1985.

In presenting the state's case to the Supreme Court, Bird offered two lines of argument: the first was procedural and the second constitutional.

On the procedural question, Bird argued that summary judgment against the Creationism law had been in error because five affidavits by expert witnesses offered by the state attesting to the scientific and secular nature of creation-science had neither been challenged nor fully taken account of in the initial summary judgment and the subsequent affirmation on appeal. The question here is, did the assertions of the state's witnesses raise matters of fact that require clarification at trial?

On the constitutional issue, Bird addressed the so-called "Lemon test," which refers to a 1971 Supreme Court decision. The test states that a statute "must have a secular legislative purpose," must have a "principal or primary effect" that "neither advances nor inhibits religion," and "must not foster an excessive entanglement with religion." Failure on any one of these three prongs is sufficient to strike down a law.

On the first prong, Bird argued that the primary purpose of the Louisiana Creationism law was to expand students' academic freedom, by allowing them "to hear additional scientific evidence on the subject of origins." He did concede that the motivation of some of the law's supporters had been religious, but this should be seen as only a "tertiary purpose," not a primary purpose. On the second, he said that creation in the context of creation-science does not necessarily involve a Supreme Being, and therefore the teaching of creation-science cannot be seen as an attempt to estab-

lish a religion in the science classroom. And on the third he suggested that teachers' good faith could be assumed in the fair presentation of material: no monitoring of the classroom would be necessary.

On the other side, Topkis stated that "The Creationism Act is intended and is perceived to convey a message of endorsement for a particular belief about the origins of the universe." Moreover, he said, "The Act does not serve, instead it subverts, the stated legislative purpose of advancing academic freedom."

On the Lemon test, said Topkis, the law becomes impaled on the first prong, that of legislative purpose. The legislative history reveals its religious motivation, argued Topkis, beginning with a statement by the act's drafter, Ellwanger, to a state senator. "I view this whole battle as one between God and anti-God forces," Ellwanger had said. This same sentiment is to be seen throughout the legislative history, noted Topkis, and as a result, "The unadorned words of the Creationism Act betray its religious purpose." In the earlier court rulings, the law had indeed fallen on this point.

The Supreme Court justices have several options, one of which is simply to affirm the lower court ruling against the act. Such a decision would be a decisive defeat for the creationists. Second, it could reverse the lower court's decision, which would finally give the Louisiana creationists the full trial they want. This would essentially produce a replay of the Arkansas Creationism trial of December 1981, which ended with the state's balanced treatment law being struck down. In a repeat performance the creationists would have an opportunity to avoid some of the more damaging testimony that hurt them last time.

A third possible decision, whose effect could be similar to the second, is based on a long-established doctrine of the Supreme Court, the Pullman abstention. This holds that the Supreme Court should not rush to decide matters of state law. In this instance, the case would be referred back to the Louisiana courts for resolution, but is procedurally messier than a simple reversal. The Pullman abstention has not yet been applied to an Establishment Clause case, but Justice Antonin Scalia—the newest justice on the bench—pursued this line of argument during the hearing and is known to favor the doctrine.

A fourth, theoretically possible, but unlikely, outcome would be a declaration that the Louisiana law is indeed constitutional. Such a decision would represent a substantial intervention in the state's laws, and has not even been requested in the state's presentation. ■ **ROGER LEWIN**

Use of Berkeley Reactor Questioned on Military-Related Research

A University of California, Berkeley physics professor has charged that use of a nuclear reactor on campus to test radiation effects on Trident II missile components contradicts university officials' assurances that the reactor is used only for research and teaching. Charles Schwartz has also raised the question of whether university rules against classified research have been violated.

University officials say that the work was done under a long-standing program of providing service to industry. They deny that use of the reactor breaches university rules.

Schwartz says he became aware of a potential issue when the Nuclear-Free Berkeley Committee obtained a copy of a list of experiments performed on the reactor. One is titled "Radiation effect on electronic components," and is being done for a group of military contractors: TRW, Hughes Aircraft, Motorola, and Ford Aerospace. Another, for Lockheed, is on "electric components testing."

The Nuclear-Free Berkeley organization sponsored an initiative declaring the city of Berkeley a nuclear-free zone, which was passed in the 4 November election. The organization has been concerned about radiation hazards posed by the research reactor, which is situated on the fringe of the Berkeley campus. The reactor, with a power rating of 1 megawatt, is a version of the TRIGA research reactor used on a number of campuses for research and teaching. It has operated on the Berkeley campus since 1966.

Schwartz pursued the matter and learned that the work for Lockheed involved the Trident. He then plied university officials with a series of questions about use of the reactor.

A response by College of Engineering dean Karl S. Pister notes that university policy prohibits teaching, research, or public service work that is classified or restricted in any way. He said, "The sponsors' purchase orders contain no classification restrictions, nor do they contain restrictions on publications, or on access to specimens or records related to any of the work."

On a query from Schwartz as to whether the tests have an ultimate military purpose, Pister's comment is that, "The relationship of the work done for a particular sponsor to a major defense contractor was not questioned because there is no University policy precluding work that may have ultimate military application."

George Leitman, a professor of engineering science and associate dean for ac affairs, said the work consisted of irra electronic components or materials s with specified doses of neutrons fr reactor.

In a letter to Schwartz, Leitman "Work to be done on the reactor is sp in terms of desired irradiation level, than the end use of the informatic tained. A recent purchase order from heed bears a title which implies that heed may use the results in suppo defense contract. We do not know i way Lockheed will use the results, a do not know how similar test resu used by others. All of the work perf on the Berkeley reactor is unclassifie

A spokesman for the university sa when Berkeley faculty voted against p ting classified research on campus in t 1960s the question of barring resear might be put to military use was dis but it proved too difficult to fashion that would cover the matter effective

Schwartz notes that half the runnin of the reactor has been devoted to work and has raised the question of w operation of the reactor, "is justifi academic grounds, or is a job sh industry." University officials say th availability of the reactor fulfills a service purpose and that the outside keeps use of the reactor at a level more efficient and economical for i demic use.

A university report on reactor u 1986 showed that the percentage o for the military contractors in questi 23%. The percentage for teaching an demic research for Berkeley was 48%

No stranger to controversy, Schwa a sustained record as an activist invol the long-term campaign against Uni of California management of the Liv and Los Alamos nuclear weapons l tories and in a variety of other efforts t Berkeley on the academic straight an row.

Schwartz continues to press the iss says that he has so far received no r his urgings to Berkeley chancellor I. M Heyman to terminate existing serv industry contracts with military in tions, appoint a campus commission t sider whether operation of the should be continued, and join him in ing a seminar next term on the social r sibility of the reactor program. ■

JOHN W