

Harry Potter and the Public School Library

Is Harry Potter, boy hero, a scourge of evil or a promoter of evil? To many adults, he is the latter, and the books about him are seen as corrupting and dangerous. Mr. DeMitchell and Mr. Carney discuss the implications of a case in which a school board holding these views voted to restrict student access to the *Harry Potter* books in the school library.

BY TODD A. DeMITCHELL AND JOHN J. CARNEY

The right of freedom of speech and press . . . embraces the right to distribute literature and necessarily protects the right to receive it. — *Martin v. Struthers*, 318 U.S. 141, 143 (1943).

HARRY POTTER is different; he is not your typical teenager. The broom-flying boy with the unruly hair and a lightning bolt imprinted on his forehead knows that “Nonmagic people (more commonly known as Muggles)” fear magic.¹ And it’s not just fictional Muggles, such as his family, the Dursleys, in whom he strikes fear. Despite the fact that Harry Potter is a fictional character who often confronts and thwarts evil, which appears in the various guises of his nemesis Lord Voldemort, he is reviled by some real-life Muggles — those who believe that his adventures of discovery at Hogwarts School of Witchcraft and Wiz-

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ardry offend Christian values.

For example, Martha Kleider, a policy analyst at the Concerned Women of America's Culture and Family Institute, notes that Harry Potter is in a "battle for the hearts and minds" of children and, because the *Harry Potter* series is seen as acceptable children's literature, "it is not surprising that this series, and other occult themes, are being pushed deeper into the classroom." She further laments that "parents who have been told that Christianity must be kept out of the schools due to the 'separation of church and state' are now trying to protect their children from classroom discussions about paganism and the occult."² Likewise, in its *Education Reporter*, the Eagle Forum claims that "*Harry Potter* promotes the religion of witchcraft, or Wicca, during the school day."³

Witches, wizards, sorcery, and spells have long been staples of the category of children's literature in which characters use magical powers in the struggle between good and evil. The *Harry Potter* books are the latest and certainly some of the most successful entries in this genre. As a result of the series' high visibility, People for the American Way reports that "across the country, parents and religious groups [have] worked to get *Harry Potter* books removed from local schools."⁴ Calls to restrict or remove such books and stories from the public school curriculum have been heard before in the courts.⁵ For example, in *Mozert v. Hawkins County Board of Education*, the plaintiff parents asserted that the Holt reading series contained passages on magic, "futuristic supernaturalism, telepathy, and the occult."⁶ The Sixth Circuit Court of Appeals held that there was no evidence that the plaintiff students were ever required to profess or deny a religious belief. The complaint was, therefore, dismissed, and the school board's decision to end an opt-out provision with regard to the series was upheld.

In his concurring opinion in an earlier United States Supreme Court case, *McCullum v. Board of Education*, Justice Robert Jackson captured the central issue in future book battles: "If we are to eliminate everything that is objectionable to any person or is inconsistent with any of their doctrines, we will leave the public schools in shreds."⁷ Furthermore, in *Epperson v. Arkansas*, the Supreme Court opined, "The First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma."⁸

Reactions to the *Harry Potter* books have resulted in individual and collective action. The national organi-

zation Family Friendly Libraries has drafted a policy for public school libraries, of which two policy points have a direct bearing on this commentary.

2. Two categories of library books and other related library resources constitute family sensitive materials that deserve special handling in the public school library setting on special shelves that do not allow general student access. Those topics are those that have age-appropriate *instructional* sexual content and those with religious symbolism and language (*Harry Potter* and C. S. Lewis' Narnia series fall into this category).

3. Parents should also be able to opt their own children out of other materials on an individual basis if their request is put in writing.⁹

The *Harry Potter* books have been some of the most challenged children's literature in recent years. With the latest adventure of Harry, Hermione, and Ron having appeared in the summer of 2005, court challenges are sure to follow. This commentary will explore the issues surrounding schools' and libraries' restricting student access to the *Harry Potter* books.

THE PUBLIC SCHOOL LIBRARY AND THE FIRST AMENDMENT

To answer the question of whether a public school library may limit access to certain books by requiring students to get the approval of their parents or guardians, we must examine the constitutional restrictions on school library books that exist already. The primary U.S. Supreme Court case that addresses this issue is *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, in which students sued their school district, alleging that the removal of books from the school library violated their First Amendment guarantee of free speech.¹⁰ The Court upheld the rights of the students, finding the right to receive information and ideas to be a necessary corollary to the rights of free speech and press. "[T]he State may not, consistent with the spirit of the First Amendment, contract the spectrum of available knowledge."¹¹

As in previous decisions, the Court acknowledged that schools have an important duty to inculcate community values and promote traditional ideals to the students in their charge but emphasized that school boards must operate within the constraints of the Constitution. Following the precedent established in the landmark case on student free speech, *Tinker v. Des*

Moines School District, the Court noted that students do not shed their constitutional rights to freedom of expression or speech at the schoolhouse gate.¹²

In *Pico*, the Court found that, although a school board has substantial discretion to determine the school library's collection, students have a constitutionally protected right to receive ideas and information.

Our Constitution does not permit the official suppression of *ideas*. Thus, whether petitioners' removal of books from their school libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners' actions. If the petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, then petitioners have exercised their discretion in violation of the Constitution.¹³ (Emphasis in original.)

The Court further found that, given the nature of the school library — i.e., students are not required to read specific books there — it is a school area especially appropriate for the recognition of students' First Amendment rights. Quoting from *Right to Read Defense Committee v. School Committee*, the Court stated that the “student learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom.”¹⁴

As for the review of challenged books, the Court directed school boards to employ established, consistent, and clearly unbiased procedures. Once a book has been

selected for a school library, students have a constitutionally protected right of access to that book unless the school board can show a constitutionally permissible reason for its removal, such as pervasive vulgarity or lack of educational suitability. However, the Court did not fashion a standard of “offensive content.” School library material that is merely offensive does not rise to the level articulated in the opinion.¹⁵

Although the Court was deeply divided over the *Pico* decision — three justices formed the plurality judgment, two concurred, and four dissented — the opinion will probably remain controlling until the Supreme Court revisits the issue.¹⁶

HARRY POTTER AND SCHOOL LIBRARY RESTRICTIONS

As noted earlier, the courts have previously addressed the curricular use of fantasy literature that allegedly promotes witchcraft — a central argument leveled against the inclusion of *Harry Potter* in the curriculum. Recently, a case came before the courts that directly involved the restriction of access to the *Harry Potter* books in the public school library. Given the number of library challenges the *Harry Potter* books face, this case is instructive for educators and school board members considering a similar restriction.

The case, *Counts v. Cedarville School District*, was filed in the U.S. District Court for the Western District of Arkansas, where parents alleged that by restricting student access to the *Harry Potter* series in the pub-

lic school library, the Cedarville School District abridged students' rights under the First and 14th Amendments to the Constitution.¹⁷

The controversy began with a complaint from a parent regarding *Harry Potter and the Sorcerer's Stone*.¹⁸ The parent had filed a Reconsideration Request Form, as the district required from anyone wanting a challenged book to be withdrawn from all students. Pursuant to its policies, the school district convened a 15-member review committee. The review committee voted unanimously in favor of keeping the book in circulation without restrictions. The matter then proceeded to the board of education, which overruled the unanimous decision of the review committee and voted 3-2 to restrict access not only to *Harry Potter and the Sorcerer's Stone* but also to the other three books then available in the *Harry Potter* series.

The board members voting in favor of restricted access expressed concern neither that the books contained profanity, obscenity, or perversion nor that they had actually led to disruption in the schools. These reasons might have been consistent with existing constitutional standards, including those outlined in *Pico* — pervasive vulgarity and lack of educational suitability — and in *Tinker* — material and substantial disruption.

As a result of the board's vote, the Cedarville High School principal removed the books from the school library shelves and placed them where only the librarian had access to them. In order to check out the books, a student had to have a signed permission statement from a parent or legal guardian. As noted above, this is a requirement that the Family Friendly Libraries organization suggests specifically for the *Harry Potter* books.

In *Counts*, the court defined the issue in the following manner: "Does a school board's decision — to restrict access to library books to only those with parental permission — infringe upon the First Amendment rights of a student who has such permission?"¹⁹ District Court Judge Jim Larry Hendren considered a motion for summary judgment from the plaintiffs and a motion to dismiss the case from the defendant school district. In essence, both sides asked the court to decide in their favor as a matter of law, as there were no disputes about the facts of the case.

The basis for the school district's motion to dismiss was its assertion that no injury could be shown because the plaintiff, district student Dakota Counts, owned several of the restricted books and had obtained permission from her parents to check out the books. Therefore, the defendant school district argued, Dakota had

“unfettered access” to the books. Citing *Pico*, the district court asserted that the right to receive information and ideas is an “inherent corollary to the rights of free speech and press that are explicitly protected by the First Amendment.”²⁰ The court found that the burden to seek parental permission prior to checking out a book in the public school library infringed on Dakota’s legally protected interests. The fact that Dakota had access to the *Harry Potter* books at home did not undermine the rationale that she was burdened at school. Thus the defendant district’s motion to dismiss the complaint was denied.

After concluding that the district’s actions placed a burden on Dakota’s right of access, the court considered whether the restrictions were justified by some exigency in the school environment. The defendant district offered two justifications for the policy: a concern that the books might promote disobedience and disrespect for authority and a concern that the books’ content relates to witchcraft and the occult. The court examined the justifications in order.

1. *The books might promote disobedience and disrespect for authority.* One board member defended the district’s decision to restrict access to the *Harry Potter* series based on the position that “books teaching that sometimes rules need to be disobeyed should not be allowed in the school.”²¹ Another board member, the only one who reported actually reading one of the books from the series all the way through, testified that the books would create problems in the school and could potentially lead to anarchy. However, the board member did not know of any specific behavioral problems attributed to the reading of the books and admitted that his vote was “preventative.” He wanted to make sure that an incident like the school shootings in Columbine and Jonesboro could not happen in the Cedarville School District. The defendant district offered another variation of this “preventative” rationale that was based on the belief that reading the *Harry Potter* books could lead students into juvenile delinquency. This defense attempted to justify the district’s restriction of the books in the school library as a prophylactic meas-

ure against something that students “might do later.”

The court opined, citing *Tinker*, that students retain their First Amendment rights to free speech within the special environment of the public school. While school boards have important and highly discretionary functions, they must discharge their duties within the limits of the Constitution. Furthermore, because one purpose of the public schools is to educate students for citizenship, “scrupulous protection of constitutional freedoms” is necessary “if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”²² The court’s decision in *Counts* recognized, based on *Tinker*, that students have the right to free speech and, based on *Pico*, that the right to free speech depends, in part, on the right to receive information. Therefore, the school board’s attempt to restrict access to the ideas contained in the *Harry Potter* series requires an analysis to ascertain if the students’ free speech rights, including the right to access information, were abridged.

The U.S. Supreme Court’s decision in *Tinker* allows for a student’s free speech rights to be restricted if it can be shown that the speech resulted in a material and

substantial disruption or that such disruption could be reasonably forecast. The court in *Counts* applied this analysis to the defendant's rationale for restricting access to the *Harry Potter* books and found no evidence that board members were aware of any actual disobedience or disrespect that resulted from a reading of any *Harry Potter* books. Their concerns were merely speculative, with no basis in fact, and "such speculative apprehensions of possible disturbance are not sufficient to justify the extreme sanction of restricting the free exercise of First Amendment rights in a public school library."²³ Citing *Tinker*, Judge Hendren pointed out that "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."²⁴ Therefore, the court found the first justification for the restriction — that the books would lead to disruption — to be without merit.

2. *The books deal with witchcraft and the occult.* The three board members who voted to restrict access to the *Harry Potter* books shared a belief that the books promoted a particular religion of witchcraft, and all three members disapproved of witchcraft and the occult. Their votes for the restriction were motivated, in part, by their antipathy to witchcraft. One of the board members stated that "if the [*Harry Potter*] books 'promoted Christianity' he would not object to them."²⁵

This statement reflected the willingness of the majority of the board to approve of Christian messages but not messages regarding witchcraft. This position, the court held, impermissibly restricts access to ideas that the school board disfavors. Furthermore, citing *Pico*, the court argued, "our Constitution does not permit the official suppression of ideas."²⁶

Thus the restricted access to the *Harry Potter* books was found to infringe on the First Amendment rights of Dakota Counts. In awarding summary judgment to the plaintiffs, the court stated, "[T]he conclusion is inevitable that [the] defendant removed the books from its library shelves for reasons not authorized by the Constitution."²⁷

CONCLUSION

Three school board members in the Cedarville School District believed that reading about the adventures of Harry Potter was so harmful to students that the district should remove the books from general circulation, requiring parental permission to check them out of the school library. This action appears to be consistent with the proposed school library policy of the Family Friendly Libraries organization. As noted, one of the rationales given for restricting access to the *Harry Potter* series was that the books promoted the religion of witchcraft. As the court in *Counts* pointed out, the concern on the part of the majority of the school board was not the issue of separation between church and state but that a religion other than that of the board members was being represented. However, the school board's "shared belief that the [*Harry Potter*] books promote a particular religion"²⁸ raises the question of how the books do so.

The defendant district board members argued that Harry's actions are religious. But this claim needs to be examined. Does Harry Potter articulate ultimate and comprehensive beliefs (see *State v. Myers*)?²⁹ What religious precepts are articulated? Do his spells conjure a deity or deities to act in a certain way, or are they just "literary" magic without relation to a doctrinal canon that guides actions? Is Harry Potter a practicing Wiccan? Do the *Harry Potter* books constitute religious writings?

If the *Harry Potter* books do constitute religious writings, and if it is asserted that religious tracts cannot be placed in public school libraries, does it mean that the Bible must also be removed?³⁰ In order to get rid of Harry, do all stories that have characters who

act in a religious manner have to be expunged from the library? Are the school board members equating casting a spell with praying? If so, then must all books containing characters who pray or ask for divine guidance be expunged from the school library along with *Harry Potter*? Can the defendant district have it both ways — get rid of Harry because of his religion but keep all stories about the Christian religion? To discriminate against Harry on the basis of his religion is to violate the neutrality requirement in the Establishment Clause.

In the end, we believe that *Harry Potter* is just what its secular writer believes it to be — a children’s story involving fantasy — not a religious tract. Harry is basically a moral adolescent who has great adventures and always triumphs over evil.

Harry Potter will almost certainly continue to be the focus of school library challenges. Using the reasoning of *Pico* and *Counts*, school leaders can develop a constitutionally valid process to handle the challenges that are sure to follow Harry’s adventures at Hogwart’s.

1. J. K. Rowling, *Harry Potter and the Sorcerer’s Stone* (New York: Scholastic, 1997), p. 53.

2. Martha Kleder, “Harry Potter: Seduction of the Occult,” *Family Voice*, 2001, p. 1, www.cwfa.org/familyvoice/2001-11/06.asp.

3. Eagle Forum, “All About Harry Potter: Marketing Witchcraft to School Children,” *Education Reporter*, May 2002, p. 1, www.eagleforum.org/educate/2002/may02/harrypotter.shtml.

4. People for the American Way, “Back to School with the Religious Right: Censorship,” 2005, p. 15, www.pfaw.org/pfaw/general/default.aspx?oid=3655.

5. For a discussion of legal challenges regarding public schools’ use of reading materials that contain witches or wizards as characters and allegedly foster occult practices, see Todd A. DeMitchell and John J. Carney, “*Harry Potter*, Wizards, and Muggles: The Reading Curriculum and the First Amendment,” *Education Law Reporter*, vol. 173, 2003, pp. 363-79.

6. *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir. 1987). In addition, the plaintiffs objected to biographical passages about women who had been recognized for achievement outside their homes. Furthermore, the plaintiffs complained that some of the stories exposed the students to other religious beliefs without stating that the plaintiffs’ views were correct. In other words, religious tolerance is not to be tolerated.

7. *McCollum v. Board of Education*, 333 U.S. 203 (1948), p. 235.

8. *Epperson v. Arkansas*, 393 U.S. 97 (1968), p. 106.

9. Family Friendly Libraries, Family-Friendly Public School Book Policies, 4 July 2002, p. 3, www.fflibraries.org/book-reports/psbookpolicies.htm.

10. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982).

11. *Ibid.*, p. 866.

12. *Tinker v. Des Moines School District*, 393 U.S. 503 (1969).

13. *Pico*, p. 871.

14. *Pico*, p. 869, citing *Right to Read Defense Committee v. School Com-*

mittee, 454 F. Supp. 703 (D. Mass. 1978), p. 715.

15. For an application of the *Pico* position on offensive content, see *V.I. Wexner v. Anderson Union High School District Board of Trustees*, 89 Daily Journal D.A.R. 5497 (25 April 1989), in which the California Third Appellate District wrote, “There is no provision in this scheme which authorizes school districts to winnow library books based on their perceived offensive content or social acceptability” (p. 5500).

16. Some courts have approached the use of *Pico* with caution because of a lack of a majority position. For example, *Campbell v. St. Tammany Parish School Board*, 64 F.2d 184 (5th Cir. 1995), considered *Pico* as guiding but not binding.

17. *Counts v. Cedarville School District*, 295 F. Supp. 2d 996 (W.D. Ark. 2003).

18. Rowling, *op. cit.*

19. *Counts*, pp. 1001-2.

20. *Ibid.*, p. 999.

21. *Ibid.*, p. 1003.

22. *Ibid.*, p. 1003, citing *Tinker*.

23. *Ibid.*, p. 1004.

24. *Ibid.*

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*, p. 1005.

28. *Ibid.*, p. 1004.

29. *State v. Myers*, 906 F. Supp. 1494 (D. Wyo. 1995).

30. For a discussion of why the inclusion of the Bible in the public school library does not offend the Constitution, see *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990). ■

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