The Blumenfeld Education Letter

"My people are destroyed for lack of knowledge." HOSEA 4:6

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The purpose of this newsletter is to provide knowledge for parents and educators who want to save the children of America from the destructive forces that endanger them. Our children in the public schools are at grave risk in 4 ways: academically, spiritually, morally, and physically — and only a well-informed public will be able to reduce these risks. "Without vision, the people perish."

Homeschoolers and the Courts or Does the State Have a "Compelling Interest" in Education?

Few Americans know enough about our educational history to understand the philosophical basis of our government-owned and -operated primary and secondary schooling system. Only in recent years has there been any real interest in finding out why the government got involved in education in the first place so early in our history, particularly since the U.S. Constitution makes no mention of education.

The assumption held by most Americans is that the government has always been involved in education and that education is a natural function of the state. This view is certainly reflected in various court cases involving compulsory school attendance. For example, in a recent case in Iowa in which Christian homeschooling parents Aaron and Theresa Rivera challenged the state's law requiring them to submit a detailed report of their curriculum, teaching methods, hours of instruction, etc., the Iowa Supreme Court ruled in favor of the state which had argued:

> First, it is beyond dispute that the State has a compelling interest in the education of its children. Pierce v. Society of Sisters . . . (1925); Wisconsin v. Yoder . . .; Johnson v. Charles City Community School Board . . . . The United States Supreme Court has recognized that "there is no doubt as to the power of a state, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education." . . . Put another way, it has noted that "education is perhaps the most important function of state and local governments." Brown v. Board of Education . . . . This court itself has noted that "the state has a clear right to set minimum educational standards for all its children and a corresponding responsibility to see to it that those standards are honored." . . . See also Blount v. Department of Education and Cultural Services . . . (". . . it is also important to recognize that the State's interest is not simply an interest in education but an interest in the quality of education . . . 'it is settled beyond dispute, as a legal matter, that the State has compelling interest in ensuring that all its citizens are being adequately educated.'"); State v. DeLaBruere . . . (". . . there can be little doubt today that the interest of a state in public education is among its most compelling considerations."). In DeLaBruere, the Vermont Supreme Court cataloged various decisions recognizing this interest:
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> A state's compelling interest in these and similar values has been overwhelmingly sustained in cases both in state and federal courts. See Murphy v. Arkansas . . . (8th Cir. 1988) (Home School Act, requiring submission of information to the state, did

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not violate Free Exercise Clause); North Valley Baptist Church v. McMahon . . . (regulation of preschool supported by compelling state interest which is "particularly acute"); Blount . . . (prior approval by state of home-schooling upheld under United States and Maine Constitutions); Sheridan Road Baptist Church v. Department of Education [Michigan] (curriculum and teacher certification requirements did not violate the religion clauses of First Amendment); Faith Baptist Church [Nebraska] . . . (reporting and teacher certification requirements upheld in suit to enjoin operation of non-complying religious school); State v. Rivinius . . . (N.D. 1982) (upholding truancy conviction, based on validity of teacher certification requirement as applied to parochial school). . . .

The state's interest in reports detailing the curriculum of home-schooled children is therefore necessarily as compelling as its underlying interest in education.

Note that virtually all the cases cited involved church schools or home schools in which the defendants never challenged the basic premise of the government's argument: that the state has a "compelling interest" in the education of "its" children. In fact, the state's brief says:

The Riveras do not appear to dispute that the State has a compelling interest generally with regard to the education of its children. However, they claim that the State must prove a compelling interest in the specific regulation at issue; here, the Riveras claim, the focus should be on the reports that parents are required to furnish. . . . Assuming arguendo that the free exercise test requires such specificity, the State can still easily satisfy the compelling interest prong of the free exercise test. If the State has compelling interest in regulating the education of its children — which it does — it certainly has a compelling interest in monitoring that regulation. . . .

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Thus, as long as homeschoolers accept the basic premise that the state has a "compelling interest" in the education of "its" children, the courts will find it easy enough to assert the legitimacy of state regulation of home education. (Note that the "its" implies state ownership of the children!) I spoke to the Riveras during a recent visit to Iowa and they told me that they did not accept the government's premise regarding its so-called compelling interest in education. But neither did they attempt to challenge the premise in their case. The very fact that the government took the Riveras' lack of challenge as an implicit acceptance of the premise indicates that somewhere down the line the state expects someone, in some court, to challenge that basic premise.

Challenging "Compelling Interest"

Why haven't lawyers representing homeschoolers challenged the state's assertion that it has a compelling interest in education? And why is the term "education" never defined? Probably because these lawyers actually believe that the state does have a compelling interest in education. In fact, we once heard Michael Farris, president of the Home School Legal Defense Association (HSLDA), acknowledge in a courtroom in Albany, New York, that the state does have a compelling interest in education. Obviously, he believed in that basic premise and had no desire to challenge it. The best that he could do was argue around the issue of reasonableness of regulation and assert that the state's arbitrary regulations violated his client's free exercise of religion.

Because the HSLDA has not wanted to challenge the state's basic premise, it has for all practical purposes conceded to the state the right to regulate homeschooling. Nor has the HSLDA thought of challenging the constitutionality of compulsory school attendance, which violates the 13th amendment's prohibition against involuntary servitude.

This is not meant as a criticism of Farris or the HSLDA which has done a remarkably good job protecting homeschoolers from the

abuses of state regulators. It is only to suggest that the time has come for homeschoolers to challenge the constitutionality of so much that goes on in the name of education and is never defined or examined in real terms. After all, what does the state mean by "education" and what exactly constitutes a "compelling interest" other than a vague suggestion that the survival of our democratic republic depends on forcing our citizens to attend some sort of school or acquire some sort of vaguely defined learning? The fact that the public schools have graduated millions of young adults unable to read, write, or compute with any degree of competency ought to make us question what the government means by "education." Does its compelling interest in education merely mean a compelling interest in keeping the education establishment in power so that millions of jobs for teachers, counselors, psychologists, principals, and administrators will be maintained by the taxpayer?

Certainly, education, as the public understands the word, is not taking place in the public schools. If it did, this nation would not have the serious literacy crisis that afflicts us, and the fifty states would not be involved in costly education reforms known as Outcome-Based Education. The government should be required to tell its citizens what kind of education it has a compelling interest in and prove that it is providing it. Otherwise we are dealing with a sham. After all, the very reason for the growth of homeschooling is the fact that the government is not providing what it says it has a compelling interest in, namely a decent education.

Compulsory Attendance

Which brings us to the next compelling question: Is compulsory school attendance constitutional? It literally forces children to serve the state's interests and forces parents to be accomplices in placing their children in involuntary servitude to the state. After all, when children are denied their freedom from the age of 6 to 16 or 18 and are forced, for the most part, to attend government institutions called "schools" in which little learning actually takes place, is not the government forcing these children into a state of involuntary servitude to the education establishment? If I am not mistaken, the 13th amendment protects children as well as adults from involuntary servitude.

Is compulsory school attendance a form of involuntary servitude? There can be no doubt that it is. But its proponents will argue that it's for the sake of the children and the sake of the country. But that still doesn't make it constitutional. There are many intelligent youngsters who would prefer to have their freedom rather than be forced to sit in classrooms where little, if anything, of importance takes place. For all practical purposes, compulsory school attendance is simply an instrument of control whereby the education establishment can force children and parents to serve the needs of the establishment which is fed from the largest river of tax-funded cash flow in all America.

A Prison Sentence

That compulsory school attendance is a kind of prison sentence can be proven by how the truancy law has been used in the case of Barry Bear in Iowa, a case we wrote about in our newsletters of April and December 1990. Barry Bear, born in 1977, was taken from his parents and placed in foster care because his mother would not force this mildly retarded child to attend public school. Although the court's action was a means of punishing the mother, it in effect placed Barry under state arrest, for he was no longer free to do anything the state did not approve

of. He could not visit nor call his parents nor arrange to meet them or any of his brothers and sisters without state approval. In short, he had become a prisoner of the state of Iowa simply to fulfill the state's compulsory school attendance law.

Actually, the school attendance law in Iowa does not call for removal of a child if the parents do not send the child to school. In this case, however, the state decided to use truancy as the pretext for invoking the CHINA statute (the Child in Need of Assistance law), as the legal instrument for removing Barry from his family. In other words, failure to enroll a child in school left the parents vulnerable to possible proceedings seeking termination of their parental rights.

But what about the child's rights? Did the child have any say in whether or not his parents would be taken from him? Apparently, the child has no rights whatsoever, for the state of Iowa still has Barry in its custody, all in the name of education. As readers of our previous newsletters know, Barry's parents, Anna and Archie Bear, live on the Mesquakie Indian Settlement near Tama. Anna, a former school teacher, is a small white lady with a keen intelligence and a feisty spirit; Archie is a tall American Indian of dignified demeanor. Anna, born in South Dakota in 1929, came to the Settlement in 1964 to teach at the Sac and Fox School. She met Archie in 1966 and married him a year later. Out of that union have come four sons and a daughter, of which Barry is the youngest. Archie also has an older daughter from a previous marriage.

There is no doubt that the state is using the Barry Bear case to establish a court precedent that will make it possible to remove homeschooled children from their parents when the state is ready to crack down on homeschoolers. This is confirmed by the following small item which appeared in the *Des Moines Register* on January 12, 1989:

> Iowa prosecutors are seeking more power to intervene in truancy cases and have suggested law changes that could give county attorneys more tools to use against fundamentalist Christians who want to teach their children at home.
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> Recommendations from the Iowa County Attorneys' Association include a change in the state's juvenile code to add truancy to the list of reasons officials can start proceedings that can lead to removing the child from the home or to terminating the parents' rights to their child.

What could be more explicit than that? The authorities chose the Bear family because they were poor, they lived on a remote Indian settlement, they were a mixed marriage, they were in conflict with others in the Settlement over property rights and would therefore not have the support of their neighbors, they were not involved in the organized homeschool movement and were therefore socially isolated, and they could be prosecuted without media attention. All that the authorities needed was to create a precedent in court so that the arguments for child removal could be cited in later cases. In short, what the county attorneys wanted was the court's sanction for legalized kidnapping. And they got it.

All of this was done, the county attorneys tell us, for Barry's benefit. But what has Barry benefited from in any of this? Since his removal in 1990, he has been in three foster homes and three different schools in three different towns. Academically, he has regressed and is no longer learning anything, having forgotten what his mother taught him at home. He has been ill with stomach ailments which is not unusual for retarded youngsters. In the summer of 1991 he was permitted to return home but was removed again in October 1991 because his parents did not register him in the public school.

In December 1991, Barry's parents filed an appeal with the Iowa Court of Appeals in

which the Department of Human Services agreed with the Bears that Barry should be returned home. The caseworker wrote:

[T]he Department questions whether there is any value in separating the child again from his family to adjust to a completely new setting, as he is not able to return to the former foster home, when the end result of all of the Department's interventions will be the same as if there is no further intervention at all. With this in mind, the Department does not deem it in the best interest of the child to remove the child from the home to again place him in a foster home that will probably be quite distant from the parental home . . . .

The Court of Appeals concurred, stating:

The case permanency plan clearly states it is in [Barry's] best interest to remain in his parents' home, rather than be placed in a foster home a great distance away from his family. The ultimate goal stated in the permanency plan is family unification. The child's age is a factor in this recommendation by the DHS. [Barry] is presently fifteen-years-old. In a few short years, he will reach the age of majority and will return home to live with his parents. The caseworker testified the amount of schooling [Barry] will receive from now until his eighteenth birthday will not greatly change his level of ability, therefore, in her opinion, he might as well return home now. The record also reveals [Barry] desperately misses his parents when he is separated from them. We do not find clear and convincing evidence [Barry] will suffer harm if allowed to remain in his parents' home. The record reveals [Barry] receives love and adequate care from his parents. There have been no allegations of abuse by [Barry's] parents. We find it is in [Barry's] best interest to remain in his parents' home.

But the Attorney General of Iowa would not hear of it, and the State of Iowa appealed the case to the state's Supreme Court. After all, the Court of Appeals had set a precedent which could negate everything the county attorneys had tried to do in establishing the state's power to destroy homeschooling. But why did a Republican governor permit his Attorney General to proceed in this case? Because the homeschoolers also pose a threat to the America 2000 Outcome-Based Education program. And so the State argued that Anna Bear was an obsessive, irrational mother who was responsible for Barry's stomach problems and that, therefore, under the Child in Need of Assistance law should be kept in foster care. The State argued:

B.B. has only missed one day of school since going to the foster home. He is learning some independent hygiene and laundry skills and likes books read to him. . . .

The juvenile court granted the CINA adjudication of B.B. . . [and] concluded that the evidence showed clearly and convincingly that the mental condition of B.B's mother was such as to result in B.B. not receiving adequate care. The court found that although his physical needs were met and his parents loved him "the mother's irrational focus on B.B's health has directly resulted in the child's inability to develop socially and educationally within his special limitations." . . .

The caseworker reported that B.B. said he liked school and was making friends although some aggressive and masturbation problems noted earlier were still reported in the foster home. The parents have not seen B.B. since November 1991 as they refused to follow the court-ordered conditions on the supervised visits. . . .

Contrary to the Court of Appeals' decision absolutely nothing has changed to alter the need for B.B.'s foster care placement. B.B. is still not being sent to school by his parents and the evidence clearly proves he is harmed by the family environment. This is true whether B.B. is eight years old or fifteen years old. The appellate court has simply given up on the parents to the detriment of B.B. who may very well not have his parents the rest of his life. B.B. deserves the opportunities to gain socialization skills and the self-care skills he will desperately need even as an adult.

Obviously, the State was straining in its arguments to justify the legal kidnapping of Barry Bear. He was their prisoner, although he had committed no crime. Although there are thousands of minors who run away from home every day in America, Barry is not free to run back to his own home. To this day, this fifteen-year-old American is as much a prisoner of the State of Iowa as any convicted

criminal in any of its prisons. What is even worse, the State made no pretense that Barry was getting the much-vaunted education for which he had been removed from his home. It argued that it was Anna Bear's "irrational focus on B.B.'s health" that was the problem. This supposedly "resulted in the child's inability to develop socially and educationally within his special limitations." How can they say that when Barry was developing very well socially among his brothers and sisters, all of whom loved him, played with him, and helped him. His brother Val Jean was home from the Navy and his brother Merle was in the National Guard. They were a handsome intelligent family. In addition, Barry is now an uncle since his oldest sister gave birth to a child. What is so disturbing is the state's contempt for the Bear family and the centrality of family life.

The State v. the Family

Thus, it becomes obvious that the education establishment will do whatever it must to maintain its power over the American family and force it to submit to the educators' social and political agendas. And so Barry Bear has become their most important prisoner because he demonstrates the power of the establishment over the family. Their aim is to frighten the homeschoolers of Iowa into submission.

When I was in Des Moines on May 23rd, I was able to see Anna and Archie Bear and their son Merle, as well as the Riveras and their children, and a houseful of other homeschoolers and activists gathered at the home of the Leslies which seems to be the headquarters for homeschoolers fighting the state. I asked Anna Bear if it would be possible for me to visit Barry whom I had met in September 1990 at a supervised meeting. Barry was now living in a foster home in Des Moines. Anna Bear called the home and was told by the foster mother that if I tried to visit, she would call the police. I was tempted to cause a scene, but it was a Sunday afternoon and no reporters or TV cameras would be there! Without the media it would be a non-event.

What I admire most about the besieged homeschoolers in Iowa is that they have decided to stay and fight it out. In fact, they now publish an excellent monthly newspaper, the Free World Research Report, which provides in-depth reports on America 2000, OBE, New Age in education, etc. I urge all of our readers to get on their mailing list by sending a $20 donation to Free World Research, Box 4633, Des Moines, Iowa 50306. The homeschoolers in Iowa deserve our support, for if they win, we win, if they lose, we lose.

Homeschoolers Win Major Victory in Michigan

Parents who teach their children at home won a major victory 5/25/93 in the Michigan Supreme Court, which issued three separate rulings that make it more difficult for the state to regulate religious or secular home schools. The decisions also could mean an end to the case against an Iosco County mother, Peggy Williams, whose trial for violating truancy laws by teaching three of her four children at home is scheduled to begin next month.

The state has no statistics on how many children are in home schools, but those involved in the movement say the number could be as high as 20,000. In the most far-reaching case, the court ruled 4-3 that requiring an Ottawa County couple to use state-certified teachers in their home school violates their First Amendment right to religious freedom. The court said the state failed to show teacher certification is the