

ORIGINAL

In the

Supreme Court of the United States

STATE OF WISCONSIN)

Petitioner,)

vs.)

No. 70-110

JONAS YODER, et al.,)

Respondents.)

Washington, D. C.
December 8, 1971

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STATE OF WISCONSIN,

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JONAS YODER, et al.,

Respondents.

Washington, D. C.,

Wednesday, December 8, 1971.

The above-entitled matter came on for argument at
10:07 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

JOHN WILLIAM CALHOUN, ESQ., Assistant Attorney General
of Wisconsin, Department of Justice, State Capitol,
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Petitioner.

WILLIAM B. BALL, ESQ., 127 State Street, Harrisburg,
Pennsylvania 17101, for the Respondents.

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John William Calhoun, Esq.,
for the Petitioners

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William B. Ball, Esq.,
for the Respondents

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for the Petitioner

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P R O C E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments in No. 110, Wisconsin against Yoder and others.

Mr. Calhoun.

ORAL ARGUMENT OF JOHN WILLIAM CALHOUN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. CALHOUN: Mr. Chief Justice, and may it please the Court:

Respondents here are members of the Old Order Amish religious sect. They reside in Green County in southwestern Wisconsin.

In November of 1968, when they refused to send their children beyond the eighth grade a summons in criminal complaint was filed in the County Court of Green County. They were tried on April 2nd, 1969, for violation of the Wisconsin compulsory school attendance law.

The case was tried in the County Court of Green County, and the respondents were found guilty there. They had a trial de novo in the Circuit Court of Green County, where the court again found them guilty and imposed a minimum fine of five dollars on each of the respondents.

They appealed to the Wisconsin Supreme Court. The Wisconsin Supreme Court reversed, and this Court granted certiorari on May 24th of this year.

Respondents object to education of their children in

public, private, secular or non-secular schools, beyond a certain point.

At the present time the objection is the eighth grade. The trial court noted the problem of the arbitrary eighth grade cutoff in its decision.

Now, a word about the decisions and opinions that were filed in this case, in the courts below.

The trial courts below found that the compulsory school attendance law did interfere with the freedom of the respondents to act in support of their religious belief. They also found that appreciable numbers of the Amish-reared youth do leave the faith.

Both the trial courts concluded, after several -- careful consideration of the cases, that the compulsory school attendance laws in Wisconsin were a reasonable exercise of the police power of the State to educate its youth.

Q The State law requires attendance of school, what, through a certain age or a certain grade?

MR. CALHOUN: Yes. That -- through a certain age.

Q Sixteen?

MR. CALHOUN: Yes. Seven through sixteen.

This is pretty general throughout the rest of the States; it's based on age and not on grade.

Q Right.

Q That would mean, would it not, that if you had a

remarkable or unusual child who began school when he was four, and whose parents wanted to take him out to pursue his own studies at a point, he'd still have to go to school formally until he was sixteen?

MR. CALHOUN: Well, if he could show a -- if he could show achievement equivalent to a high school education, at any point, he would be excused from the compulsory school attendance law.

O So the achievement test is interposed on the arbitrary sixteen, isn't it?

MR. CALHOUN: Yes, there's an area of discretion there to be exercised by the State Superintendent of Public Instruction, Your Honor, and this provides for certain unusual cases, and of course there are exemptions for health problems and handicaps and that sort of thing.

But there's no problem with respect to the substantial equivalency of education. The discretion resting with the State Superintendent of Public Instruction.

Now, the opinions of the Wisconsin Court were three in number. There was the principal opinion, which stated -- page 133 of the Appendix -- "we view this case as involving solely a parent's right of religious freedom to bring up his children as he believes God dictates".

If nothing else than that God dictates in an infinite variety of ways, this makes for a clearly broad issue.

The concurring opinion has stated this: Under the facts of this case there has been an inadequate showing that the State interest in establishing and maintaining an educational system overrides the defendant's right to the free exercise of his religion.

Q What happens in Wisconsin under your statute if a person aged -- under sixteen, wants to go off into a vocational school?

MR. CALHOUN: We have a vocational school situation in law, Your Honor, which --

Q That's considered --

MR. CALHOUN: Yes,

Q -- as meeting it?

MR. CALHOUN: That's a rather elaborate system of vocational schools in Wisconsin, and there is a provision specifically for children to attend the vocational school if that vocational school is in the school -- within the school district, and this, the trial court asked the same question in this area, and was satisfied that the vocational school law probably had no particular application in this case. Although vocational schools are certainly open and available to all people in Wisconsin.

Q Generally, what is the range of training in a vocational school?

MR. CALHOUN: The range is very broad. Now, the

agricultural vocational school, which would probably interest the Amish more, is handled through the Land Grant, the old Federal Aid Program to agricultural education; and that's handled in the high schools. There is a special agricultural teacher who is paid out of federal funds. And that has been in existence for a long time.

So that is available. There isn't any question that these vocational programs are available to respondents.

Q Do the Amish have private schools?

MR. CALHOUN: Do they have private schools? Yes. In many areas they do. And in this particular instance, however, they apparently refused to set up any school which goes beyond the eighth grade. There are no secondary schools in operation by the Amish in Wisconsin, that I know of; there may be some who are -- haven't been approved by the State Superintendent, but are still in operation.

Q Mr. Calhoun, --

MR. CALHOUN: Yes.

Q -- was there any element of retaliation in this case?

MR. CALHOUN: I think there was not, Mr. Justice Blackmun. There was absolutely no evidence of that, and in fact this has been a rather intelligently and studiously tried case from the beginning. There is a good -- there are statements in the record of expert witnesses in favor of --

speaking in favor of the Amish; there's been no rancor, and it's been a most interesting case, because it has been free of that type of thing.

Q And yet it was triggered by the loss of State aid at the time?

MR. CALHOUN: Well, yes. There is a loss of State aid. But that is really insignificant to the issues involved. I don't think that that has really anything to do about it. The State aids are very small, compared to the real need of the school district.

Now, --

Q Well, I gather the issue here, though, is not whether the children must go to school, is it? Rather, that the issue is whether the parents --

MR. CALHOUN: Yes.

Q -- must see to it that the children go to school?

MR. CALHOUN: Yes. It isn't a question of truancy here. The question is whether the parent can be compelled to send their children to school.

Q And I take it that it's really a limited issue, constitutionally at least, whether their freedom of religion is --

MR. CALHOUN: Well, --

Q -- violated by requiring them to send their children to school.

MR. CALHOUN: -- we think there are two issues here, really.

First of all, is whether the -- let me state this: Whether or not respondents may select the time, the extent, and whether or not they will comply with the compulsory school attendance laws. And whether there is, somewhat more broadly stated, a constitutional right to conscientiously object to education.

Q Yes, but as I gather -- or am I wrong -- we are not concerned here with whether the children have to go to school, Amish or not; we're concerned with whether Amish parents can be compelled, under threat of criminal function, to --

MR. CALHOUN: Well, of course, we're concerned about the rights of the child to an education. I think we're concerned about that. I don't think we can avoid that as an overriding issue, and I think the dissenting opinion expressed that well. Because the compelling interest of the State is in the education of the children, and the interest of the child in education is important. It's vital.

And this is the -- this is what we think the real issues are. Now --

Q Well, Mr. Calhoun, isn't it true in Wisconsin and in other States that the way to get to the fact that the child is not in school is to get the parents? Isn't that the

normal procedure, what was done here?

MR. CALHOUN: Is to --

Q If I say I will not send my child to the public school, I'm the one that's brought into court, isn't that the --

MR. CALHOUN: That's right.

Q -- normal procedure?

MR. CALHOUN: That's right, yes.

Q Isn't this just as normal as any other case?

MR. CALHOUN: Yes.

Q Procedurewise, I mean.

MR. CALHOUN: Well, that's right. It's a question of whether or not they have complied with the law.

In this particular --

Q Yes, but doesn't the State have to show a compelling interest in this?

MR. CALHOUN: Yes, we think there's a compelling interest in education.

Q Well, is it enough that it's a compelling interest in education, or does it have to be some other kind of compelling interest?

MR. CALHOUN: No. I don't think there has to be any other kind of compelling interest, because it is through compulsory education, compulsory school attendance, that the interest is implemented. The interest -- the subject to be

regulated is education.

Q Well, I don't see how anyone can question that the State has a compelling interest in education.

MR. CALHOUN: Yes.

Q But you think that answers --

MR. CALHOUN: I don't think it answers the question completely, no. I don't think it answers the question completely.

Q It has to have a compelling interest in total compliance, doesn't it?

MR. CALHOUN: Not in --

Q Can you demonstrate that?

MR. CALHOUN: No, I don't think -- I don't think that -- the compelling interest is not in total compliance. Necessarily.

The question is whether or not the court can say that the Amish parents have a constitutional right to conscientiously object to education, to sending their children to school.

Q Well, you don't -- you don't -- does the State challenge that this is their position about education and is their warp and woof about their religion?

MR. CALHOUN: What we have said in that is simply this: That, as the trial court has said, it interferes with their freedom to act, but not with their religious belief, as such. And that the cases are clear, and this Court has pronounced time and again that the freedom to act may be

restricted in interpretation of the First Amendment, but the freedom to believe may not.

Q Well, you mean the old polygamy cases?

MR. CALHOUN: That's right. The old Mormon cases --

Q Is that what --

MR. CALHOUN: --- Cantwell vs. Connecticut --

Q Is that what we have here?

MR. CALHOUN: Yes. Yes. It's as simple as that. And it could be decided that way.

Q I wish it were. I don't find that that's so.

MR. CALHOUN: But we're saying -- what we're saying here is essentially that there is a compelling interest in education. That's essentially our view, and that this Court and the Congress and the people of this country have manifested this compelling interest.

The concurring opinion --

Q I don't see how anyone can challenge that.

(Laughing.)

MR. CALHOUN: That's right. I don't, either. But, Your Honor, and this is what we find *wrong*; this is why we're here, is because this is what they said. Under the facts of this case there has been an adequate showing that the State's interest in establishing and maintaining an educational system overrides the defendant's right to the free exercise of religion.

It's just as clear as that. It's as clear as the conscientious objector cases. It's as clear as the statement in Gillette. It's as clear as Wals and Seeger. I don't want to equate -- I don't want to equate military ruse and imply by equating compulsory education with military conscription, that the heavy hand of the State is being applied here. It's quite the contrary.

The compulsory school attendance law has been in existence for years. They were part of the established church when this country was founded, when the Colonists established the theocratic societies in the pre-Revolutionary days, when the church became disestablished, the compulsory school attendance laws remained. They remained in a democratic fashion, and they are applied and enacted in a democratic fashion.

* * * When you talk about Sherbert v. Verner, which is the case on which the respondents rely, you are an entirely different set of values. You're not talking in Sherbert v. Verner about a social institution of the type that education, military conscription, the system of taxation, all of these other things where the Legislature acts to grant the exemption.

This is a positive force that we're dealing with, for the benefit of society. And it is the Legislature that should determine in its own areas of protection of the loyalties of this country. It is the Legislature that should determine whether the compulsory school attendance laws are

necessary to enact or to obtain the full benefit of education to the individual and society.

At this point I think we get to an important area for this Court to consider. I am sure that you are aware of Justice Frankfurter's opinion in Minersville v. Gobitis, and in his dissent against West Virginia v. Barnette. In these particular cases he espoused the importance of a Legislature, and it is in this particular area, in the area of education, where we are talking in terms of the positive movement of more education and not less.

Q We have other --

MR. CALHOUN: And in that the Legislature has an important function.

Q We have other cases, of course, as you well know, where the power and the duty of the State to support education comes into collision with the religion clauses of the First Amendment; isn't that what we have here?

MR. CALHOUN: Well, in a different -- what particular cases do you have in mind?

Q Well, the recent cases that were decided, where States were giving support to private schools and --

MR. CALHOUN: Yes, all right, I think that's right.

Q -- and that State action was thought to be --

MR. CALHOUN: All right --

Q -- in conflict with the First Amendment.

MR. CALROUN: No, I think that what -- yes, I think what the Court is -- I think what we're doing is opening up a little different approach for the same argument; we'll arrive at the same conclusion.

As, I think, Justice White said, it's our good fortunate, in Lemon v. Kurtzman, that the States have undertaken to educate our youth and to compel their attendance in school by compulsory school attendance.

Now, what we're concerned about here takes up to Pierce v. Society of Sisters of the Holy Name, where the Court said that we couldn't compel attendance at public schools, but there is no reason why attendance could not be compelled at public or private, secular or non-secular schools. And this is the area, when you talk about aid to parochial education, that we get into.

We get into a proposition that endeavors to augment this, and that is not really the question here. The question here is education or no education. It's not a question of private education or public education, or how much one should be aided over the other.

Yes, there is a First Amendment question, but it's an establishment question, rather than a freedom-of-worship question.

Q I take it, if -- I think you said earlier in answer to Mr. Justice Douglas, that the Amish do have their

own schools?

MR. CALHOUN: Yes.

Q And I take it if, like Roman Catholic parochial schools, or any other parochial schools, the standards of education in those schools met the State standards, you wouldn't be here, would you?

MR. CALHOUN: That's right. We would not.

Q And it is that they will not comply with the State quality standards, is that it?

MR. CALHOUN: Yes, they won't. As a matter of fact, — that's correct, yes. They have no -- no schools. They haven't the schools.

Q If the Amish could show -- they haven't done so in this case, I take it. But if they could show that their own training in agriculture brought their children at age 16 to the same point, or a higher point of achievement, as compared with those who went to the vocational schools to learn about agriculture, would you be here then?

MR. CALHOUN: Well, I'm not sure. Because I'm not sure whether that would meet the standards -- we probably wouldn't be here. We might be in some other lower court, determining whether there was a reasonable ruling by the administrative bodies, such as the Department of Public Instruction, who are experts in this area. But it would not be the same constitutional question that's involved here.

That I think it's safe to say, that we would not.

Now, --

Q Incidentally, do the Amish have any formal schools in Wisconsin at all?

MR. CALHOUN: Do the Amish?

Q Yes.

MR. CALHOUN: Yes, I think there are some grade schools, and I believe they were establishing a grade school in the Green County area. I'm not sure of that, but I know there are some schools that are established up in the Medford area in the northern part of the State.

Q Does the quality of education in those schools satisfy State standards?

MR. CALHOUN: I believe that those schools do satisfy State standards, although it may be that the School Superintendent hasn't made a ruling on it.

Now, I've indicated that the compulsory school attendance law, and the ruling of the Wisconsin courts more properly analyzed, in terms of the conscientious objector cases, Walz, Seeger, and Gillette. And to this extent the ruling of the Wisconsin court does present a constitutional right to anyone who has a conscientious objection based on a sincere moral belief to object to education.

And we submit that this would raise havoc with the educational system, not only in Wisconsin but throughout the

country.

Now, let's look at the specific laws, for example. There is a correlation expressed in Prince v. Massachusetts, a correlation, for example, between compulsory education and compulsory school attendance and the child labor laws. They are integrated. We've quoted the child labor laws to show that in our brief.

Now, not only is there a correlation there, but there must be a correlation in the whole program, the whole legislative program regarding children. The manner in which a juvenile judge, for example, deals with a dependent child would be affected by the decision of this Court. And if it were to say that there is a constitutional right to conscientiously object to education, I feel that would be removing a vital tool from the administration of the law as it relates to youth and children.

I'll reserve the rest of my time, Your Honor, for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Calhoun.

Q. Mr. Calhoun, would your case be any different if, instead of age sixteen, it were age 21?

MR. CALHOUN: That question was asked last night. No, I think we've gotten into the area of reasonableness, Your Honor, and again the line is drawn somewhere, and it's reached by a basis that is not arbitrary, and I assume this is done in

the legislative halls and in the testimony of witnesses, who are experts in education, before various committees. Age 21 would not be a particularly advisable area, whether in terms of education today this is reasonable would probably have to be determined by the Court. It would not seem to me to be.

But I don't think the principle, the underlying principle is much different.

In other words, it's a matter of legislative, administrative concern.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Calhoun.

Mr. Ball.

ORAL ARGUMENT OF WILLIAM B. BALL, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. BALL: Mr. Chief Justice, and may it please the Court:

The Wisconsin Attorney General's attempt to have these Amish parents found criminally guilty has now entered its fourth year. This, in spite of the fact that in January of this year, the Supreme Court of his State, by a 6-to-1 vote, came to two conclusions, and I am quoting now from the concurring opinion, that "there has been an inadequate showing that the State's interest in establishing and maintaining an educational system overrides the defendants' right to the free exercise of their religion"; and, secondly, that Amish "should not be required to attend a school which meets the requirements of State

law beyond the eighth grade."

And even the one dissenting opinion, that of Mr. Justice Heffernan, talked about this prosecution came to be triggered, because there's strong evidence that the purpose of this prosecution was not to further the compelling interest of the State in education, but, rather, the reprehensible objective, under the facts of this case, to force the Amish into school only for the purpose of qualifying for augmented State aid.

I am going to tax the Court by going over just a little bit some of the facts as they have been presented, because I think they're basic from hearing the questions that have been asked.

The legal basis for this prosecution is the refusal of these parents on religious grounds to afford the three children in question, at most, two years of high school under a statute which requires not a high school course, not four years of high school, not even one year necessarily, but merely school through age 15, not through age 16, through age 15, according to the statute.

Now, the State interest becomes a little bit varied when we think in terms of compelling State interest, because if there is a VO school, a technical school, vocational school in the school district, then the age limit is 18, up to 18 the child must attend.

A different standard applies whether there is no vocational school, and the record in this case establishes that there was no vocational school in this district.

Now, then, in terms of interest the State has in trying to compel these children to attend school beyond the eighth grade, we have to realize that for Frieda Yoder, the daughter of Jonas Yoder, one of the three children in question, only one year of schooling was involved, because she was 15 years and 5 months old on the day the criminal complaint was brought against her father. Barbara Miller would have only six months of this State benefit of additional compulsory education, because she was 15 years and 8 months old at the time the criminal complaint was brought.

Now, it is the position of the Amish parents that the application of the statute to them violates their free exercise of religion, and that there has been no showing whatever, no showing at all that non-application of the statute to them violates or creates any substantial danger to any interest of the State of Wisconsin.

Nobody on our side challenges the fact that the compulsory attendance laws bespeak a compelling State interest. We have merely, in fact, emphasized in this case and in our defense of this, our whole sole support of the statement of this Court in Brown vs. Board of Education, wherein the Court said: "Education is a principal instrument in awakening the

child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

This is a superb description of what the Amish people believe in in terms of education.

My argument, may it please the Court, will pursue two points: one, the free exercise claim; and, secondly, the question of danger to interests of the State, which the State of Wisconsin has said exist in so substantial a degree.

The free exercise point is extremely important, that is, it's extremely important that I try to develop this at some length, because here we're not talking about one tenet of a religion being at stake. For example, observance of the Sabbath, or opposition to military training.

We're not talking here about one particular practice, say, studying of the Gospel through speech or press or assembly, as has appeared in a number of cases.

We're not talking about one fixed exercise, such as the salute to a graven image, or recitation of prayers, or Bible reading. We're talking about a whole complex of religious interests.

Religious interests in rights, in education, in worship, in parental nurture, in individual religious choice, in vocation, in communal association, with respect to teaching and learning and with respect to privacy, as we have tried to spell

out in our brief.

And, indeed, we're talking about, as will appear, the continued existence of the Amish faith community in the United States.

In Garber vs. Kansas -- Kansas vs. Garbez, rather, the only other State Supreme Court decision in point, very scant attention was paid to the actualities of the Amish religious claim, and therefore we're dwelling on that to some extent here this morning.

Q And the Amish are in what, about a dozen or 15 States of the Union, is it?

MR. BALL: Yes, about 15, Mr. Justice Stewart.

Q And is it --

MR. BALL: About 50,000 people.

Q And each Amish community is unique, in a way, that there are local variations among them, are there not, and among their --

MR. BALL: There are slight variations among them. I would say the Old Order Amish are fairly uniform, whether you find them in Lancaster County, Pennsylvania, or whether you find them in New Glarus, Wisconsin, they are very much the same. They follow the same practices and have the same attitudes toward religion, education, children, the simple life, and so on.

Q The same basic lifestyle --

MR. BALL: Yes, sir; yes.

Q --- as dictated by their religious beliefs and outlook. And we're talking in this case about the Old Order Amish; is it only the Old Order Amish, so-called, who object to formal education?

MR. BALL: Old Order Amish and Old Order Mennonites, and some variants of these same groups which are, nevertheless, basically the same.

Q They have --

MR. BALL: All about the same position.

Q -- come down from the Anabaptists, as I understand it.

MR. BALL: Yes, that is correct.

Q And these particular people go back to Switzerland in the what --

MR. BALL: They do.

Q -- the Sixteenth Century?

MR. BALL: They go back to a time in the Sixteenth Century, Mr. Justice Stewart, when a number of people of the Protestant Reformation sought to return to what they believed to be the Golden Age of Christianity, in the early centuries of Christianity, and to reject the institutional churches, the Catholic Church and the other Protestant Churches; and to do this, and to have that life, they believed that their lives had to be governed completely by the Sermon on the Mount. And this

would be, therefore, the meaning -- the call to the creating of a community of love, of mutual help, of simplicity, closeness to nature, animals, soil, plants, and so on, turning the other cheek, and extremely importantly, perhaps the most critical point in the understanding of the Amish religion, separation from the world. Which they believe was not only the practical means whereby this life could be lived, but was also a means, a principle enjoined upon them by the Gospels themselves.

Where St. Paul speaks and says "Do not be conformed to this world." This is a basic doctrine of Amish religious teaching.

And so, therefore, they, in two ways, have sought to separate themselves from the world; and have maintained this over the centuries.

First of all, they see that there has to be a separation from what they consider pride of intellect. That is to say, the higher learning, as they express it. They believe that education's aim should be the life of goodness, not the life of the intellect; the making of a good man, not the making of the good American life. They believe that this life of goodness rejects the world of technical cunning, and instead embraces wisdom. They believe that life is a very short pilgrimage, and that it's whole purpose is to get human beings to their salvation in the arms of God.

A question was posed, a very enlightening question was posed upon the trial, by the Deputy Attorney General assigned

to the Department of Education in Wisconsin. He said to Professor John Hostetler, who is was an expert witness on the side of the defense, and who is the world's foremost authority on the Amish people; he asked Dr. Hostetler: Isn't it the point of education to help a person to get ahead in the world?

And Dr. Hostetler superbly replied: It depends on which world.

Later explaining that of course what he meant was that the aim of education, as far as the Amish are concerned, is to get to Heaven.

Therefore, they reject what many of the rest of us accept in the world of knowledge, and they believe that the education in writing and reading and arithmetic, which a child can acquire up until the time of adolescence, is sufficient education; particularly in view of the fact that Amish life is not concerned with technical and technological achievement and development.

Q Now, Dr. Hostetler grew up in an Amish community, and he's a Ph.D.

MR. BALL: That is correct.

Q Now, how is that to be explained?

MR. BALL: It shows that he left the Amish faith; it shows that people can leave the Amish faith; and that the fact that they began in life as Amish children is not necessarily a crippling experience. He later elected to leave

the Amish faith. And this is done in the Amish faith at the time of adult baptism.

At that time, a child, or a young man or woman, must face up to the fact of whether he wishes to live the Amish life or not; and he may refuse to live the Amish life if he wishes to. Some do. There are no wholesale departures from the ranks of the Amish people.

I think we have brought out in our brief and in Dr. Hostetler's many works on this subject it is shown that, while there is some attrition, the community has continued in pretty much the same size over the years.

Well, this first rejection then is the rejection of the world of intellect, and the second is --

Q Is there a belief in elementary education, or just an acceptance of it? I'm talking about education through the eighth grade, learning to spell and to decipher, as well as --

MR. BALL: Well, they believe that --

Q -- to read and write?

MR. BALL: -- those basic skills are sound and desirable for a child to have. They're quite aware of their citizenship. They believe that a person should be able to read and write and communicate.

Q So there's more than just an acquiescence in that, there's an affirmative acceptance of education?

MR. BALL: Yes, there's an affirmative acceptance of education to that point.

Q Mr. Ball, I take it, then, if they -- that among the consistent adherents to the church there are no professional people, no lawyers, no physicians?

MR. BALL: That is quite true, Mr. Justice Blackmun.

Q Unless they come back after their education.

MR. BALL: Yes. Yes, that is quite correct.

Q And yet they do rely, certainly, on medical knowledge elsewhere, do they not?

MR. BALL: Yes, they rely upon medical knowledge, they simply -- their point of view is not whether medical knowledge is necessarily good for the world, their point of view is one that is simply based upon the fact that they believe that they, themselves, may not pursue the higher learning.

This is a point of strict religious belief with these people.

Q But they will seek medical treatment?

MR. BALL: Yes, they will seek medical treatment. Right now they are receiving legal help, though they did not seek it. It came to them through the National Committee for Amish Religious Freedom.

But they do not -- they would far rather suffer, personally, prosecution than make a test case, go into court, and so on.

Q In that connection, is there any --- has there been any attempt to compromise the situation, as evidently was done in Pennsylvania in --

MR. BALL: Yes, Mr. Justice Blackmun. The Supplemental Appendix sets forth the efforts which we made under a number of provisions of Wisconsin law, in which we felt there was some daylight for these people. We attempted a negotiation for them, to avoid having any kind of court case, and these attempts were rejected out of hand, as I think the Supplemental Appendix very clearly reveals.

The second element of separation is a separation from the ways of the world. The Amish do not want their children, and they do not want themselves to be exposed to the spirit of luxury, of ostentation, of strife, consumerism, competition, speed, violence, other such elements as are commonly found in our American life.

Therefore, education for them embraces a rejection of the higher learning, and a positive emphasis upon the learning of the agricultural life; it rejects the concept of exposure to and service in the ways of the world; and, when you add to this the factor of adolescence, you will see why an Amish person, whether we would agree with him or not, may not, from a religious point of view, attend school beyond the eighth grade.

That factor of adolescence is extremely basic in

Amish religious thinking. It's the time which leads to adult baptism; it's the time of the starting of life's work; it's meeting the challenges and real responsibilities on the part of young people; it's a very sensitive time when values are formed.

The Amish religion forbids high school, then, because of those three elements, with a tremendous stress on the importance and the opportunity which adolescence creates.

Now, if they are placed in school, the record shows that they are going to be -- these children are going to be exposed to the social life of the school, be it public, private, or parochial; they are going to be exposed to a curriculum, much of which they must religiously reject; and much of which is superfluous to their intended life as growing up in the Amish faith community.

Q Well, what of those schools that the Attorney General has said the Amish have established?

MR. BALL: Yes, they --

Q And where they adhere to the State standards of curriculum?

MR. BALL: Mr. Justice Brennan, those are all elementary schools. The Amish do not maintain any high schools whatever.

Q That's within your reading-writing premise?

MR. BALL: Yes, that's correct, Mr. Justice Brennan.

Now, when you take a child from Amish life at adolescence and place him in a high school, he is naturally going to be exposed to those values which his parents' religion rejects; he's going to be exposed to those ways of life which typify high school today. And this alienation, of which there is abundant testimony in the record, this alienation of the child who has been raised, as he has a right to be raised, in the Amish faith community up until adolescence -- there's no disagreement with that on the part of the State. He has been raised in that atmosphere up until then. To be suddenly placed in a high school where there's different dress, different speech, very, very different people, with very, very different backgrounds; this is extremely traumatic to the person. And this alienation is psychologically damaging to such a person.

Q Why is that so much more traumatic than the eighth grade would be?

MR. BALL: In the eighth grade, our particular defendants were in parochial schools, Amish parochial schools until the eighth grade. They attend an eighth grade, they attend up to that time, whether they are in a public or an Amish school, to be, at least in part, associated with other Amish children.

The Amish place a tremendous importance upon the coming of adolescence. They believe it's at that time in one's life when you are heading toward adult baptism, and when the

whole person is in a state of ferment and change, that at that time in your life the influences of the world can be especially deadly to the Amish child.

I think adolescence is a very important part of this whole thinking of the Amish, that up until the eighth grade, in those earlier years, the chance, or the temptations to become a worldly person, and the imposition of values in another school system may have far less impact, than they will to a child who is beyond or in adolescence.

Q Do I understand that in this particular community the elementary schools are more or less regional, so that most of the students are Amish students? Or not. Is that what you're saying?

MR. BALL: Yes, this is correct. The Amish parochial schools are Amish schools, and the children --

Q There are none here in this County, are there?

MR. BALL: Yes. In fact, it was understood that this prosecution was triggered by the very fact that, as the record shows, the Amish one-to-eighth-grade school had been started.

Q Yes, it had been started, I know; but prior to that time,

MR. BALL: Yes. Now, these children --

Q But prior to that time they went to the regular --

MR. BALL: Many Amish children have attended public

schools, Mr. Justice Marshall.

Q -- Wisconsin public school.

Well, were they mixed in with others, or were they --

MR. BALL: Yes.

Q -- because of locality --

MR. BALL: The percentage varies, the pattern varies. In some cases they have been mixed in with others and in some there have been, perhaps, a majority of Amish children in the school.

Q But on the high school level there would be a broader mix, obviously?

MR. BALL: At the high school level there would be a very much broader mix. And at the time of high school, the child is then, in the Amish religion, being prepared for a complete vocation in Amish life. And this is extremely disruptive to that vocation.

Secondly, it is the time of life when exposure to these elements are going to have a very serious impact upon his values. He will have been raised, even in the eighth grade, in the eight years, essentially in an Amish community. And the involvement in high school, with its social life and everything else, is going to be destructive of his faith.

Q From a religious point of view, is this elementary education approach somewhat like that of the Jewish faith, with the, I think it's age 13 when a Jewish child is

considered to have become a mature adult.

MR. BALL: Yes.

Q Is there an analogy between the Amish attitude and that of the Jewish faith?

MR. BALL: I think it's a quite close analogy, Mr. Chief Justice Burger. And I think that's well brought out, by the way, in the brief of the -- brief amicus curiae in this case, by the Synagogue Council of America and other related Jewish groups.

I would like to come, if I may, in the time that remains, to discuss the danger to the State, which the State has said it is faced with, if these Amish children, for religious reasons, are permitted to not attend school through age 15.

One has to ask whether the State, with its very ample legal research resources, why they never placed a single witness on the stand, produced any documentary evidence at all, one scrap of any study which would give color to the charge that Amish non-attendance threatens some compelling State interest.

All the evidence on that point of compelling State interest came from the defense. The State offered really two points: First of all, that Amish non-attendance of two years, one year, six months, whatever it might be, threatens, of all things, the State's establishing and maintaining an educational

system.

Six judges below, the Wisconsin Supreme Court, denied this fact. Certainly here is no danger of fraud. Very few people could show what the Amish have shown, that is to say, a unique and ancient religious tradition that religious claim, that the obvious nurture and protection of children which takes place in the Amish community, which treasures children, the whole factor of training in life for a useful and productive vocation, and no casting of the children upon the community.

Certainly here there is far less danger of fraud or disturbance of a system than was found in Sherbert vs. Verner. No one else's rights are harmed by virtue of Amish non-attendance. And here I'm reminded of the statement of Mr. Justice Brennan's dissent in Braunfeld, when he said, "the values of the First Amendment ... look primarily towards the preservation of personal liberty, rather than towards the fulfillment of collective goals."

Here you would have precisely that put into scope. The collective goal is not going to be disturbed by the fact that these children do not attend school.

Additionally to that, I have to reinforce what Mr. Calhoun said a few moments ago, when he quoted to the Court the findings of the trial court, the findings of the Circuit Court, and the determination by the State Supreme

Court that the free exercise of the Amish religion was patently here involved. That the State action in forcing these children into high school constitutes a denial of the free exercise of religion.

This, I think, is established in the case, irrespective of what may be thought of the Amish religion; the remaining question then becomes one of a compelling State interest, which means what is the danger to the State, and certainly it is not in the general enforcement or maintenance of an educational system.

Now, does it deny the child free choice? Does it deny the child, as the State says, his right to an education?

There is a national consensus that we have cited in our brief at page 32, to this effect, that there is no compelling State interest reflected in State compulsory attendance laws, in having children attend school beyond the 15th birthday.

And this seems to be, if this is the case in State after State after State, that the State doesn't feel that a child needs to attend school beyond 15, then it seems to me that these children in question do not present, in terms of their own right to an education, any danger to any compelling State interest.

We have produced in evidence, and cited in our brief, this study, which was by Professor John Bostatler, under a commission from the U. S. Office of Education, of achievements

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of Amish children in standardized tests, and it reveals that they perform well. The State has referred to Prince vs. Massachusetts in its argument on behalf of parens patriae; but we have been able to show, I think, quite clearly that there is no such danger to these children as was involved in the Prince case, whose facts were that of a child hawking a religious magazine at night in streets; Amish life is a garden of nurture of children.

The -- certainly the Attorney General is not telling us that the child labor laws in Wisconsin are not enforced, and certainly, therefore, if there is any need for protection in that direction, the State of Wisconsin is very able to afford that protection.

The State has talked loosely about the disease of ignorance in opening the gateways of opportunity to these children. But we introduced positive evidence which shows that Amish education produces good people; we've cited the testimony of Dr. Erickson of the University of Chicago, when we specifically asked him questions concerning Amish education, which he had very carefully studied. And his comment was this:

"The Amish definitely provide for their children of high school age what could be called an education."

Remember, this was uncontested by anything the State chose to put in the record.

"I would be inclined to say they do a better job in

this than most of the rest of us do.

"The Amish are in a fortunate position respecting the schooling which they conduct for children beyond the eighth grade. It is learning by doing -- an ideal system. We are learning that current education is detached from the real world and that in the things they talk about the pupils do not become involved or have real responsibility. The lack, in modern education, of a clear connection between learning and doing is responsible for much of the student actions that we have today."

We asked, "What kind of people these are?" And we put the Sheriff of Green County on the stand. We asked him question after question after question about those crimes of violence which are most typical, typically committed by young people today: arson, looting, rape, et cetera, et cetera, et cetera.

The Sheriff gave these people a complete bill of health. They have never been known for the commission of crime.

Dr. Littell, an authority on the history of the Amish people, has stated that they have not been known to have committed a felony in 250 years on this soil. They are a peaceable people and an asset in our society. Not in terms of gross national product or the building of missiles, but certainly in terms -- but certainly in terms of the goodness that they afford as an example to the rest of our society.

We placed the Welfare Director on the stand, the

Welfare Director of Green County, and we asked him whether the Amish take care of their old people, their dependent people. And the Director of Welfare testified that the Amish completely take care of themselves; they do not cast their burden on the community; they do not have people on relief or welfare; they do not have their aged in public homes for the aged.

I think that what we're talking about here are really great achievers. They've been in the education business for 300 years. They're the finest natural farmers in the Western Hemisphere.

You go up -- Members of the Court, you go up to Lancaster County in Pennsylvania, and if you were to see these people and see them in actuality, you would find young men who are heads of families and managers of large farms, experts in husbandry; you'd find in their women very model women, managers of households, very fine people.

And I think that it's quite surprising that these people are singled out as not having an education, denying their people an education. For 300 years these people have done superbly. For 300 years these people have performed very well in our society.

The question before the Court, then, is whether the State may destroy -- because that's what it will come to if these children are forced into high school -- a peaceable, self-sustaining community, 250 years on this soil, on the

grounds that the parents in that community cannot send their children, on account of a clear mandate of their religion, to one or two years of high school.

Mr. Justice Stewart, in Braunfeld, said that the Orthodox Jews in that case were faced with a cruel choice. A far crueler choice is presented in this case.

If the decision of this Court is against the Amish, I fear that many people will feel that this Court has indicted our nation as too ossified, too brittle, too moribund to allow difference, innocent difference, to exist and to flourish in its midst.

The Amish do not come here as fearful supplicants to this Court; they come here with confidence, believing in this Court as their brothers in justice, in love and goodness, and belief in constitutional liberty.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Ball.

Mr. Calhoun, you have four minutes remaining.

REBUTTAL ARGUMENT OF JOHN WILLIAM CALHOUN, ESO.,

ON BEHALF OF THE PETITIONER

MR. CALHOUN: Thank you, Your Honor.

We have absolutely no quarrel with the Amish way of life. In fact, to some of us in the remorseless daily crunch of living, the grass on the Amish side of the fence looks green, and much greener than ours -- at times. But, I submit

that retreat to a simpler era may have had some justification 200 years ago, when Rousseau was extolling the virtues of the Cro-Magnon man, but that too much water has gone through the turbines for that kind of a position.

What is needed is more education to cope with the problems of society, more pride in intellect not less pride.

This is what we shall be developing in our educational programs.

The objection that the Amish have is to an additional two years -- at this point an additional two years of education. And the people before the Court here are Amish.

But this -- if this Court does affirm this decision, it will apply to any number of years of education. There can be no effort or no decision of this Court, it seems to me, that can say eighth grade is the cutoff point.

There is nothing logical or constitutional about the cutoff.

Q How can you say that, counsel, how can you say that in such sweeping terms, when, for two or three hundred years in this country, primary education has been thought to be the eight years in elementary -- seven or eight years in elementary school?

MR. CALHOUN: Yes, but it is -- yes, seven or eight, and now sixth grade is considered in some areas as elementary education. Seventh, eighth and ninth are considered a middle

school, and then the balance is high school. In some areas there is the junior high school.

This is not so important as what is being taught is changing. The worldly courses of languages, foreign languages, and the institution of educational television into the elementary grades. These things are objectionable, you see.

And the dynamic quality of education makes it very difficult to say and to administer a rule which says the eighth grade is the limit beyond which anyone can be compelled to go to school.

Q Well, haven't some very distinguished educators been very critical of the American system, because it was concentrating on courses like inter-personal relations, community relations, et cetera, with students who couldn't spell and read adequately and write by the time they got out of high school?

MR. CALHOUN: May I suggest that that is true, that education today is undergoing serious study and revision. That many experts in the field have written urging reform, and I think that this is necessary. I think that there should be organic involvement at the local level in education, that we must do this, but I think that what this Court should be doing is to encourage that sort of thing; encourage the ferment and the change that's necessary to make education a viable institution.

That's what this Court should do.

Thank you.

Q Mr. Calhoun, do you agree with Mr. Ball's statement that this is absolutely against their religion to go to school beyond the elementary school?

MR. CALHOUN: I don't agree with it fundamentally, no.

Q Well, do you have anything in the record to contradict it?

MR. CALHOUN: That -- yes. The trial court found -- if you will just bear with me, I will find that point.

Q Well, if it's a finding, by the way, that the Supreme Court has rejected, it doesn't -- it won't help you very much, will it?

MR. CALHOUN: Pardon?

Q If it's one of the findings of the Supreme Court of Wisconsin that rejected it, it won't help you very much?

MR. CALHOUN: No. It isn't one -- what it says is that they didn't exactly reject it but they just didn't consider it. And it's this, on page 181 of the Appendix:

"Obviously in the long history of this state it existed in areas when and where there was no such thing as an eighth grade or even school systems of any kind. Just how the eighth grade cutoff point was arrived at was not explained.

Age apparently was not the test, nor was the quality of the school system apparently a factor."

Q This is a memorandum decision by the Circuit Court.

MR. CALHOUN: That's right.

Q I want to know, is there any evidence? Any testimony? Any experts that contradicted the Amish experts?

MR. CALHOUN: There was no expert testimony that contradicted the Amish testimony, except the testimony of the State Superintendent -- of the Superintendent of the Schools in the county.

Q Well, does he know anything about Amish law, or Amish doctrines?

MR. CALHOUN: Yes.

Q He did?

MR. CALHOUN: He knew about Amish people, he was acquainted with Amish people. They lived down there.

Q Well, you deny that it isn't a part of their faith that they should not go to public school beyond the eighth grade?

MR. CALHOUN: No, I deny -- I deny that it -- I say this, that the trial court found that this did not interfere with their religious belief, as such, but with their freedom to act; and that the freedom to act, the restriction on their freedom to act here was a reasonable one which had been imposed

since 1642 in this country, that the compulsory school attendance is not a law which has just been recently enforced. We've had it since the beginning of our educational system.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Calhoun, thank you.

Thank you, Mr. Ball.

The case is submitted.

(Whereupon, at 11:09 a.m., the case was submitted.)