Christian Coalition of Washington
Educating and Activating Christians for Social, Political, and Spiritual Action

May 2002

High Court Sides with Porn Industry

[T]he propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained. --George Washington

On April 16th, the U.S. Supreme Court struck down a federal statute banning the production, distribution and possession of computer-generated images depicting children engaged in sexual acts. The six year-old law was intended to address the fact that manipulated images are becoming virtually indistinguishable from the real—making enforcement of existing child-porn laws almost impossible. This latest ruling, for all practical purposes, legalizes child pornography.

Though the statute was upheld in four of the five federal appeals courts where it was challenged by the so-called *Free Speech Coalition*—a porn industry group—the Supreme Court decided to review the findings of a three-judge panel of the 9th U.S. Circuit Court of Appeals. The 9th Circuit, which had ruled a portion of the law unconstitutional, covers West Coast states and is considered by many to be the most liberal in the nation.

Observers say the lower court "found" a provision in the First Amendment of the U.S. Constitution that protects pornography that only appears to depict real children engaged in sex. But the Ashcroft Justice Department, argues that the issue is not the method by which the objectionable material is produced, but rather its content, purpose and effects—which is at the core of all indecency and obscenity laws.

Writing for a 6-3 majority, Supreme Court Associate Justice Anthony Kennedy expressed concerns that certain portions of the *Child Pornography Prevention Act of 1996,* would chill free speech by calling into question "legitimate educational, scientific or artistic depictions of youthful sex." However, other legal scholars say such a finding ignores law and fact, and serves no purpose other than to legitimize the sexualization of children. It is also, little more than an accommodation to cultural trends rather than a regulation of them according to the letter and light of the Constitution.

In a speech to students and faculty at New York University School of Law last fall, U.S. Supreme Court Associate Justice Stephen Breyer (who agrees with Justice Kennedy) refuted the idea of a literal interpretation of the Constitution. He told his audience that he believes the Constitution should be a "living document," not frozen in history. He said there is no justification for basing interpretation of the Constitution solely on issues like language, history, tradition and precedent. The recent ruling bears witness to that view.

In his book, *Original Intent*, [1] author David Barton discusses moral relativism which is known as "legal positivism" when applied in law. He says "positivism" was introduced in the 1870's when Christopher Langdell, the Dean of Harvard Law School at the time, applied Darwin's premise of evolution to jurisprudence. Langdell reasoned that since man is evolving, then his laws and the Constitution must also evolve—under the guidance of

competent judges. Consequently, the concept of case-law study was introduced so that students would study judges' decisions rather than the Constitution.

So successful was Langdell's case-law approach, that as more law schools embraced it, the more diminished became the belief in truths that are self-evident. Students were taught that it should be their mission to move the science of law from a narrow field of legal interpretation to a sociological force in order to help change society. Author David Barton has noted some of the public comments and written opinions of former jurists who embraced that philosophy: [2]

> "[T]he justification of a law for us cannot be found in the fact that our fathers always have followed it. It must be found in some help which the law brings toward reaching a social end."
> Oliver Wendell Holmes, Jr., appointed to the Supreme Court in 1902

> "I take judge-made law as one of the existing realities of life."
> Benjamin Cardozo, appointed to the Supreme Court in 1932

> "We are under a Constitution, but the Constitution is what the judges say it is."
> Charles Evan Hughes, Chief Justice from 1930 to 1941

> "The [Constitutional] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." (TROP V. DULLES, 1958)
> Earl Warren, appointed Chief Justice in 1953

A brief survey conducted by our staff some time ago, confirmed our suspicions that the study of constitutional law is largely irrelevant today. Since the American Bar Association has no specific requirements regarding constitutional law training for schools it approves, some law schools have omitted it as a prerequisite for a law degree. No surprise that Christopher Langdell's Harvard Law School is one of them. (Six sitting Justices have attended Harvard, five hold undergraduate degrees from Harvard, and three received their JD's from Harvard).

Next to Harvard in the not-so-stellar cellar is Georgetown University Law School requiring three credits and Yale Law School at four credit hours of constitutional law study to satisfy law degree requirements.

So what is the point?

History demonstrates that ideas put forth in our churches and classrooms today, will be the beliefs embraced by our leaders of tomorrow. Those beliefs, whether true or false, will eventually become public policy, impacting our families—perhaps to the third and fourth generation.

Speaking at the Constitutional Convention in 1787, George Mason (the Father of the Bill of Rights) reminded his peers that God judges nations for their public stands. He said, "As nations cannot be rewarded or punished in the next world, so they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities." [3]

Pray ye therefore the Lord of the harvest, that he will send forth laborers into his harvest. (Mt 9:38)

Rick Forcier

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[1] Barton, David, *Original Intent*, 1997, WallBuilder Press, Aledo, TX
[2] Ibid, pg.229
[3] Barton, David, *Keys To Good Government*, 1994, WallBuilder Press, Aledo, TX, pg.21