EDUCATION

The Forced Funding of Student Radicalism

by Scott Southworth

I happen to be a conservative, a Christian, and white. I am also in the military, and I disapprove of homosexuality. At the University of Wisconsin, there is little tolerance for this combination of characteristics. As a student there, I served as the symbol of all that's wrong with the world. My checkbook showed just the opposite, however: I supported the International Socialist Organization, the Gay, Lesbian, Bisexual Campus Center, the abortion advocacy of the Women's Center, and the radical environmentalism of the UW-Greens (offspring of Ralph Nader's Green Party). With my money, the left endured with a virulence well known at most public universities.

To any outsider—especially anyone who knows my political and ideological beliefs—my support appears ridiculous. It was. However, it was not due to some gut-level feeling of "political correctness" or "multiculturalism" on my part. This support was coerced. The price for noncompliance? No grades; no graduation.

During my four years of undergraduate study and one semester of law school at the university, I had again and again expressed my outrage at the university policy of utilizing mandatory student fees to fund the political and ideological advocacy of private student groups. Finally, another law student, and one of my best friends, Keith Bannach, told me about a Christian legal foundation named the Alliance Defense Fund (ADF). He encouraged me to contact them about filing a lawsuit, and I finally did so in February 1995. I learned from Scott Phillips, the executive director of the ADF, that his organization did not represent people but rather funded worthy cases approved by a board of directors after the attorney on the case sent in an application for funding. However, he gave me the name of a Christian attorney from Fairfax, Virginia, who had successfully applied for funding in the past. His name was Jordan Lorence.

I called Jordan immediately, and he agreed to take the case. The Alliance Defense Fund agreed soon thereafter to full funding. It was my job, as a quasi-expert on the mechanism for funding these groups, to figure out a way to explain the university's system to him. I had helped shut down a previous student government during my last year as an undergraduate, and had fought the implementation of the new, similarly structured student government that had formed under the helping hand of the university administration.

The University of Wisconsin operates under two large financial pools of money: tuition and student fees. Tuition pays for the professors' salaries, most university buildings, the maintenance of the lawns, the infrastructure, etc. Student fees fund a variety of services, and are divided into two small but separate pools of money: allocable and nonallocable. The nonallocable fees fund the Health Services, the recreational facilities, and the student unions. Like tuition, students have no control over the amount or recipient of these funds. The pool of allocable fees—totaling nearly $500,000—is reserved for the student "government," which can spend as it wishes, pending approval by university officials.

Both student governments that existed during my study at the university served their leftist clients well by funneling cash to many radical groups. To mask their cash cow, however, they also passed a few dollars on to nonpolitical or ideological activities (e.g., a bus service on campus). Additionally, the student government and the administration employed two well-known tactics to avoid any questions from would-be dissenters: secrecy and extensive bureaucracy. When a student (or parent) received the "Fee/Tuition" bill, no explanation followed as to what "fee" meant. No delineation existed on the bill to warn students and parents that their money funded radical agendas. In fact, if students wanted to find out where the "fees" went, they would have to query the administration, which sends out a nondescript list of all the allocable and nonallocable funds which make up student "fees." It does not, however, alert anyone to many of the actual activities funded by these thousands of dollars.

If a student wished to see a breakdown of the individual allocable funds, he or she would have to contact the office of the student government. This office would then provide information that explains that student groups receive funding from two different allocable funds, distributed either by a committee of the student government or directly from the government itself, and that student groups could also receive funding via a student referendum. Each funding mechanism, of course, had its own application procedures and rules, etc., etc. Additionally, the Chancellor and Board of Regents would have to stamp their approval on all funding, and student groups receiving funds could only operate under certain guidelines. Needless to say, the system brilliantly confused or frustrated most detractors from proceeding past the inquiry stage. Since the administration abounds with leftists who agree wholeheartedly with the radical agenda of the student government, no whistleblowing had occurred to stop the practice.

To explain all of this to my attorney, I prepared what I affectionately term the "initial binder." After studying this for some time, he agreed that the university's policy was an unconstitutional burden on students studying at the UW, but felt that we should offer the Board of Regents a way out without a lawsuit. He then wrote a courteous letter to the president of the board in November 1995, explaining the law and the policy. We never received a reply.

By early 1996, it became clear that a lawsuit was imminent. Amy Shoepke, a first-year law student and former UW undergraduate, joined in the process of developing the lawsuit, as did Keith Bannach. With our attorney, we embarked on evidence gathering. We collected

voter guides from the campus environmentalists, "abortion rights" advocacy from the university's Women's Center, pornographic pictures and sexually explicit literature from the resident pro-homosexual organizations, and even a videotape of a protest at which the International Socialist Organization helped to disrupt a talk (at a local church) opposing homosexuality. With this mountain of previously unexposed evidence, we filed the suit on April 2, 1996, in federal district court.

Our allegations that the university violated our rights to freedom of speech, freedom of association, and the free exercise of our religious beliefs were rebuked by the university and those organizations which received funding. Name-calling ensued. Three ACLU supporters labeled us "bigots" in a letter to a campus newspaper. Many students verbally attacked Amy in the law school, and I had a meeting with the dean to discuss our physical safety on campus.

The fall of 1996 found us engaged in depositions, evidence collection, and brief writing, and by early October 1996, all of the briefs lay on the desk of Judge John Shabaz. Both sides knew that no trial would be necessary, since no material facts were in dispute. The legal opinion of the judge, in the form of a "summary judgment," would provide the decision we needed. In the brief supporting its motion for summary judgment, the university argued that its educational mission included the funding of student advocacy. We countered that the university's mission could not extend so far as to violate students' First Amendment rights.

On November 29, 1996, Judge Shabaz granted our motion for summary judgment. Noting that the university compelled students to fund the advocacy of private political and ideological groups, he held the system unconstitutional as a violation of the First Amendment rights to freedom of speech and association. Since the system stood as unconstitutional on these grounds, he did not reach a ruling on the free exercise claims.

Not surprisingly, the university appealed in mid-December to the Seventh Circuit Court of Appeals, which holds jurisdiction over Wisconsin, Illinois, and Indiana. Though the leftists on campus lauded the decision to appeal, they were not alone. We also approved of the decision, because a circuit opinion not only carries more weight but also affects a larger group of would-be defendants (namely, the University of Illinois and the University of Indiana).

Legal theories become much more important than facts at the appellate level. Jordan taught me this well, and in late February he called me to discuss a new legal theory that he had developed for the case—one that combined two seemingly dichotomous lines of cases created over decades of litigation in the United States Supreme Court.

The first line of cases we call the *Abood-Keller*. *Abood* and *Keller* involved the payment of dues to a union and a bar association, respectively. The California Supreme Court, in a case involving the mandatory student fee at the University of California, summarized the principles of these cases: "*Keller* and *Abood* teach that the state may compel a person to support an organization if there is a sufficiently compelling reason to do so, and that the organization's use of mandatory contributions must be germane to the purposes that justified the requirement of support." In other words, unions and bar associations cannot compel members to fund nongermane advocacy.

The second line of cases, the *Widmar-Rosenberger*, involve the concept of the "open forum" on university campuses. *Widmar* held that the university could not deny access to the physical forum created by the university (classrooms, kiosks, etc.) because of a student group's ideology. *Rosenberger* (decided in June 1995) held that the university could not deny a group access to the pool of money created through student fees (a metaphysical forum). Of course, there is a difference between the physical and metaphysical forums; namely, the physical forums have primary purposes other than subsidizing the advocacy of any particular group.

Though both lines of cases stood alone, what the United States Supreme Court had not yet decided was the issue we presented: What to do when a student does not wish to pay into the metaphysical forum, which directly funds political and ideological advocacy? Justice O'Connor had hinted at this problem in her concurring opinion in *Rosenberger*: "Finally, although the question is not presented here, I note the possibility that the student fee is susceptible to a Free Speech Clause challenged by an objecting student that she should not be compelled to pay for speech with which she disagrees."

Jordan combined both lines of cases to determine that the university has a duty to implement *both* the *Abood-Keller* and the *Widmar-Rosenberger* principles: in other words, the university may not deny access to the physical or metaphysical forums created, but they also cannot compel students to pay into the metaphysical forum against their wishes. In Jordan's words, "No exclusions due to viewpoints, no compulsions due to viewpoints."

This new legal theory recently had its first test at the Seventh Circuit. Arguing on June 4, 1997, Jordan eloquently explained this new theory to a three-judge panel in Chicago. Notwithstanding the logic of our argument, the university insisted that its educational mission lay broadly enough to require compelling the fee. However, Judge Manion, the presiding judge during oral arguments, asked the attorney representing the university if a black student would have to fund a Ku Klux Klan organization, or if a Jewish student would be forced to contribute to a Nazi group. The university responded in the only way it could: "Yes." With that answer, the policy appeared as draconian and unconstitutional as it ever had.

Who defines what is "political" or "ideological"? Each individual. No private school group on campus needs life support from the student government. If an organization cannot survive in the marketplace of ideas, then it deserves dissolution.

We are not arguing that the university does not have an interest in promoting a diversity of opinions. However, even the university understands that promoting an environment where students can express competing viewpoints can only go so far. In fact, university policy excludes all religious groups and both the Democratic and Republican organizations from funding. Of course, the solution to a bad system is not to make it worse. Funding *all* organizations on campus would only serve to increase the number of people suffering a violation of their constitutional rights.

The answer is simple: *stop funding private groups*. We do not oppose an "opt in" system on campus, which would operate much like the Combined Federal Campaign, allowing students to have a certain amount of money added to their fee/tuition bill and then distributed to the groups of their choosing. However, any system which operates to take money from students against their will cannot

stand against the weight of the First Amendment.

Above all the rhetoric surrounding the university policy, the specific activities of any particular group, or the precedent from the United States Supreme Court, a simple principle remains strong: government coercion in the areas of freedom of speech, freedom of association, and the freedom to exercise one's religious beliefs cannot be tolerated—especially at our public educational institutions. Students must never allow a small group of individuals, utilizing the heavy hand of government, to trample over these rights. They have a right—a duty—to fight any system which compromises the integrity of the First Amendment.

James Madison perfectly addresses government coercion: "Who does not see . . . [t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" Under the guise of "diversity," the university forced us to conform to an unethical, unnecessary, and unconstitutional system. We exposed them. We questioned them. We fought them. We won. We pray that we will prevail at the Seventh Circuit as well, thus giving students the right to exercise the freedoms guaranteed by our Constitution.

Scott Southworth recently graduated with honors from the University of Wisconsin Law School.

Homegrown

by Katherine Dalton

This speech was delivered in April at the Webb School, a private secondary school in Knoxville, Tennessee.

I try not to put on airs about what I do for a living. I would never tell you that writing is dignified enough to be called a profession, like being a doctor or an architect. Writing is a trade, or to use a better word, a craft. It does, however, take a lot of work to become any good at it, and while I am not a good writer yet I am getting a little better with practice, and I take comfort in that.

One thing I have learned from making my living writing is that clichés are death. They don't just ruin your prose style. They are rotten shortcuts people use instead of thinking, or to keep others from thinking, or sometimes to lie.

When somebody who is bright enough to speak clearly starts using big clichés, or talking in meaningless sentences, watch out. I will give you an example: When I was an undergraduate at Yale, I ended up party to suit against the university. It was a classic First Amendment case: certain parties at the university were trying to put our magazine out of business because they did not like the articles we printed. It is a long story I will not go into now, but my point is that the first lawyer we hired might as well have been speaking Hindustani to us. He always explained what he was doing in language that was absolutely incomprehensible.

All of us who had brought the suit were very young at the time, students or recent graduates; we were inexperienced, and we thought the problem was with us: we thought we could not understand our lawyer because the law was so complicated and we were so ignorant. But we eventually discovered—and we discovered it the hard way, in briefs and in court—that we could not understand the lawyer because he was not saying anything understandable. He was not competent.

These days one of the biggest clichés around, one of the great buzzwords of the past decade, and one which gets more popular by the minute, is "global"—the global economy, the global village, the global market. I am sure you hear it all the time. Maybe someone has told you that you need to learn computer programming or Chinese in order to prepare for a global career. I can think of perfectly good reasons for doing both of those things, but the globalization of yourself is not one of them.

Yet people are adamant about globalism. They say the world is getting smaller, nobody stays in one place anymore or even one country, the times are changing and we have to change with them. Certainly the way technology and telecommunications have affected our personal and working lives is astonishing. But people who say these things want us to believe that we have little or no power to shape our lives, that we must bow to fate in the form of international trade agreements and transatlantic telecommunications. And really, that is globaloney.

Yes, if a volcano erupts in Hawaii we will see changes in our weather. If Great Britain dumps nuclear waste in the North Sea, it will poison our fishing and our seas. But you do not live in Ukraine anymore than you live in Mexico, or even Washington state. You live in Knoxville. Your character is being shaped by this place and the people in it more than any other place or any other people, whether you like it or not. Your primary ties, and your primary responsibilities, are to the people and the land that you live among here. As Kentucky writer and environmentalist Wendell Berry observed about that beautiful photo of the Earth taken from outer space, and I am paraphrasing: "Look at it. And try to find your neighborhood."

We do not live in the "world." Mostly we live, eat, sleep, shop, go to school, go to church, hang out at the mall, all within a radius of a few square miles. There is no such thing as a global village; that is a phrase with no meaning. A village is a few hundred people living together, not a few billion. In a village you can know everybody. We could not take in all the names and faces and personalities and problems in the world even if we wanted to.

When I first moved to New York in the mid-80's, I found myself making eye contact with most of the people I passed in the street, the way I had always done at home and at school. It seemed strange to me that at the end of my walks I felt emotionally drained. Only after a few months did I realize that I was making eye contact with too many people. It takes a puff of emotional energy to interact with another person even that little bit, and in passing hundreds of people a day I was exhausting myself.

We can loosen or lose old ties and responsibilities—it is not that hard to leave our families behind and move away to a city where nobody knows us. But only within very tight limits can we gain new ones. If I were to move to Paris tomorrow, never in my whole life could I become a Parisian. I would always be a foreigner living in Paris, and no driver's license or new citizenship papers would change that. Even if I moved to Knoxville, at best in 20 or 30 years I could call myself a thoroughly rooted transplant Tennesseean. But still I would always be a Kentuckian. I would still root for UK.

We are local by fact and by necessity—and as far as I am concerned that is a good thing, for a lot of reasons. We do