Court Historical Society
NEWSLETTER Eastern District of Tennessee

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Judge Hull and "Scopes II"

By Margaret G. Klein

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Margaret Klein

"If I erred at all, I erred—and I'm proud to have done so—on behalf of individual freedom."

These were the words of the late **U.S. District Judge Thomas Gray Hull** in a television interview in which he discussed what he called "the most celebrated case that I've ever been a judge in or a lawyer in."

He was referring to Mozert v. Hawkins County Board of Education, which was erroneously called "Scopes II" at the time. In that case, fundamentalist parents claimed that because the reading books given to their children at Church Hill Elementary School contained material offensive to their sincere religious beliefs, the books must be replaced.

Seldom is a federal judge confronted with a case of the same dimensions as the one to which Judge Hull devoted almost five years in the mid-1980s. And it was filed only days after he took office in 1983.

Among the writings the parents objected to were segments from "Goldilocks," "The Wizard of Oz," and a dramatized version of "The Diary of Anne Frank." The general public viewed their beliefs as "quirky," to say the least.

Judge Hull dismissed the case, ruling that even if the charges were true, the First Amendment's provisions regarding the establishment of religion and the free exercise thereof were not violated. The Sixth Circuit Court of Appeals disagreed and reversed, and the case went to trial in July 1986.

Greeneville was inundated with TV camera crews, newspaper reporters, and representatives of advocacy groups such as Concerned Women for America on the plaintiffs' side, and People for the American Way for the defendants. The two teams of high-powered, well-paid lawyers presented their evidence, and in October 1986 Judge Hull issued a 27-page ruling.

Rejecting a "my way or the highway" approach, he solved the problem with an "opt-out" provision, meaning that the parents could keep their children from reading the offending books at school; if they did so, however, they must teach the children reading at home, or have them tutored, in order to pass the required tests for their grade.

Unfortunately, many educators in Tennessee and elsewhere railed against the idea of "opting out," and the national media likewise misinterpreted Judge Hull's decision. Editorial pages and syndicated columnists called his ruling "peculiar" (Atlanta Constitution), "preposterous" (Baltimore Sun), "absurd" (Philadelphia Inquirer), "outrageous" (Baltimore Sun), to quote a few.

Months later, a three-judge panel of the Sixth Circuit Court of Appeals overruled the decision; it held in favor of the school board, rejecting the opt-out plan.

Legal scholar **Stephen Bates**, author of a highly acclaimed 365-page book about Mozert, appropriately titled "Battleground: One Mother's Crusade, the Religious Right, and the Struggle for Control of Our Classrooms" (Poseidon Press1993), wholeheartedly agrees with Judge Hull. [Editor's note: The Court Historical Society has a copy of this book in its archives.]

The case came to an end in February 1988, when the U.S. Supreme Court turned it down. Judge Hull later remarked about Mozert:

> It was an interesting lawsuit; I'd have to say it was the most celebrated case that I've ever been a judge in or a lawyer in. I don't know why, but it was—more media attention, more attention in the populace. It was a case of a school board, a governmental entity, just crushing children, seven to twelve years of age . . . I think that the best result that could've come out of it was the one I suggested, the Sixth Circuit to the contrary notwithstanding.

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Margaret Klein, author of the above article and a longtime supporter of

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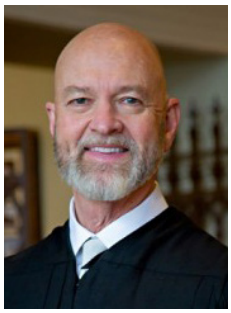
the Court Historical Society, was asked by Judge Hull to represent him at the Danforth Foundation Seminar for Federal Judges and Educators in November 1987 in St. Charles, Illinois, and participate on a panel. "I focused on the Mozert case and explained why Judge Hull's decisions in the bitterly fought case were correct, despite the way they were portrayed in the media," she said. Her article appearing here comes from her notes for that panel discussion.–EDITOR

Law Clerk Recollections of the Case

We asked two former law clerks who worked with Judge Hull during the time of the Mozert case for some of their recollections of that time. They are Greene County Circuit Court Judge Thomas J. Wright, who served with Judge Hull in 1985-86, and Kate Ambrose, Knoxville lawyer who served with Judge Hull for more than 20 years, retiring in 2004. Judge Wright serves as Northeastern Division Vice President of the Court Historical Society, and Ms. Ambrose is a longtime member and strong supporter of the Society.



Judge Wright

Judge Wright:
I came to work for **Judge Hull** about the time the Sixth Circuit was reversing the initial dismissal. My involvement was only with the trial and Scopes II decision. The scene was surreal in the courtroom with a jury box full of national media and several nationally prominent attorneys at counsel tables. All this, tucked away in the tiny East Tennessee community of Greeneville.

Although I was privileged to work on the opinion in the case, the decision was 100% Judge Hull's. He used to go on walks and just think about decisions; and, I may be mistaken, but I believe that is how he arrived at the "opt out" decision. It was brilliant. Strip away all the emotion, all the ifs and buts and what ifs, and just do what is right for these families without disrupting the reading curriculum for all the other students.

He affirmed the plaintiffs' sincerely held religious beliefs, protected by the 1st Amendment, without placing any burden on the State (school system). The former fact gets overlooked in most discussions about the Mozert case. The defense stipulated that the plaintiffs were motivated by sincerely held religious beliefs, even though most would disagree with those beliefs. The Free Exercise of sincerely held religious beliefs is squarely within the shelter of the 1st Amendment. When an accommodation can be made without any burden to the State, I still believe the Constitution requires it, and I continue to believe Judge Hull was correct in his decision.

Today, after a year of "remote" learning it seems almost laughable that the idea of trusting this small group of parents to teach their children reading outside the classroom would be condemned, but as **Ms. Klein** notes, it was.

Mozert is by far the most controversial and noteworthy case of my entire career. It was a rare privilege to have had the opportunity to work on this case with Judge Hull and **Kate Ambrose**, his other law clerk at the time.

Thank you for including me in this historical remembrance. I am more than happy to share my thoughts about the Mozert case.

My brief clerkship with Judge Hull was the most profound experience of my professional life, quite apart from the work done on Mozert and other important cases. Judge was, and continues to be, my most influential mentor. I still miss his advice, common-sense analysis, and folksy manner. My current office has a window which looks out at the old federal courthouse where I spent my formative professional years, first as a law clerk and several years later as an Assistant Federal Defender.

As a judge I found myself quoting various "Hullisms" regularly, especially during the first few years on the bench. Anyone that ever practiced in front of Judge Hull knows that he liked to "get down to the licklog." He did not want to waste any time, always urging lawyers to get to the point. Which is one reason Mozert is all the more remarkable. It was quite a long proceeding, and my recollection is that Judge was extraordinarily patient.

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Kate Ambrose

Ms. Ambrose:
When the Mozert case was first filed, **Judge Hull** ruled that the Constitution does not protect public school children from exposure to the market place of ideas. The Sixth Circuit apparently thought that it does if material in the curriculum is offensive to "sincerely held religious beliefs." But once you try the case and find that the plaintiffs' beliefs are sincerely held, you are forced to fashion a remedy.

Nothing in the challenged books was obviously offensive and there was no reason to deprive other students of their contents. So, how does one right this "wrong"? I think Judge Hull's initial ruling was the better one.

It's the only case Judge Hull had where we were reversed twice (and basically right the first time).

I worked for him a little over 20 years and loved every minute of it. He was a kind, fair, honest and loveable man and very generous with his personal staff and the entire court "family." He was a genuine "Mr. Fezziwig" who loved to close the whole courthouse and invite everybody who worked there to a Christmas party.