



Young Jehovah's Witnesses preparing to distribute literature in Washington County.
From left: Joanne Adair, Mary Shaffer, Kathleen Cannon, and Mary Cannon. *Courtesy Kathleen Cannon Tackett.*

Patriotism, Pledging Allegiance, and Public Schools: Lessons from Washington County in the 1940s

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THE PLEDGE OF ALLEGIANCE, first composed in the nineteenth century, has once again become a topic of considerable editorial comment and political posturing in the twenty-first century, as seventeen states have enacted new pledge laws or amended existing statutes.¹ Nonetheless, there is little evidence that many citizens or elected officials are aware of the history and consequences of attempts by patriotic organizations, local school districts, and state governments to define and require expressions of appropriate sentiments about the nation's flag. This essay examines incidents at two schools in Washington County, Arkansas, during the early 1940s, when public school children refused to pledge allegiance to the flag because of their religious beliefs and suffered the consequences. While these were certainly not the only instances of controversy over the flag salute in Arkansas schools in that period, the Washington County episodes serve as an effective case study. They suggest something of the motives, actions, and experiences of those involved in similar incidents across Arkansas and the nation.

The school flag movement began in 1888, when James Upham, head of the premium department of *Youth's Companion* magazine, launched a four-year campaign to encourage the display of United States flags in school classrooms, in order both to sell flags and to promote "American patriotism." The following year, Col. George Thatcher Balch introduced an American flag salute in his New York City kindergarten class, requiring students to stretch their right arm forward while pledging, "We give our

¹Only eight states do not have some type of public school Pledge of Allegiance statute: Hawaii, Indiana, Iowa, Maine, Michigan, Nebraska, Vermont, and Wyoming.

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heads and our hearts to God and our country; one country, one language, one Flag." Balch spread his ideas for inculcating Americanism by publishing a book, *Methods of Teaching Patriotism in Public Schools*, in 1890.²

Youth's Companion had already sold over 25,000 flags to public schools when it first published the Pledge of Allegiance in its issue of September 8, 1892. It wished to promote nationalism in the schools during the celebration of that October's 400th anniversary of Columbus's arrival in the Americas. Written by Francis Bellamy, a thirty-year-old assistant to the editor of the magazine, the Pledge originally read, "I pledge allegiance to my Flag and to the Republic for which it stands: one Nation indivisible, with Liberty and Justice for all." Leaflets containing the Pledge were distributed to public schools, and an estimated twelve million students recited the Pledge on Columbus Day, 1892.³

The drums of war, as always, found public officials and professional patriots ready to seek national unity through the force of law. In 1898, as the United States went to war with Spain, the New York legislature passed the first statute mandating that each public school day open with a salute to the flag and other patriotic exercises. What had begun as a youth magazine's publicity campaign to promote patriotism and sell flags had become a ritual required by law. During World War I, children of Mennonites were expelled from schools for refusing on religious grounds to recite the Pledge of Allegiance, and, during the 1920s, public school students of various religious backgrounds suffered similar fates from Delaware to Denver.⁴

During the "Red Scare" following World War I, the American Legion, Daughters of the American Revolution, and other patriotic organizations urged public schools to stress "100 percent Americanism" in the curriculum. Arkansas was among the states that acted. In 1923, the General Assembly adopted laws requiring the display of the American flag at all educational institutions in the state and mandating the teaching of patriotism, both of which remain on the statute books today.⁵ That summer, the American Legion led the call for the first National Flag Conference to meet in Washington, D.C., and changed the wording of the Pledge of Allegiance, replacing "my flag" with "the flag of the United

²George Thatcher Balch, *Methods of Teaching Patriotism in Public Schools* (New York: Van Nostrand, 1890).

³U.S. Congress, House, *Text and History of Pledge of Allegiance to the Flag*, 83rd Cong., 2nd sess., 1954, H. Rept. 2236; John W. Baer, *The Pledge of Allegiance: A Centennial History, 1892-1992* (Annapolis, MD: Free State Press, 1992).

⁴Robert Justin Goldstein, "The Great 1989-1990 Flag Flap: An Historical, Political, and Legal Analysis," *University of Miami Law Review* 45 (September 1990): 44-47.

⁵Act 614 of 1923, *Arkansas Code Annotated* § 6-16-105 (2003); Act 397 of 1923, *Arkansas Code Annotated* § 6-16-111 (2003).

States,” so that immigrants and their children could not covertly pledge allegiance to the flags of their countries of origin. For added emphasis, the second National Flag Conference in 1924 changed the pledge again to read “the flag of the United States of America.”⁶

Religious opposition to compulsory flag salutes in the United States became an issue after Jehovah’s Witnesses in Germany refused to participate in saluting the Nazi flag in schools and at other public events. Many were jailed or sent to concentration camps, and the group was officially banned by Adolf Hitler.⁷ Joseph Rutherford, president of the Watch Tower Bible and Tract Society, made clear that Jehovah’s Witnesses in the U.S. felt the same way about the American flag and all such political symbols. Asked about events in Germany during the denomination’s annual convention in Washington, D.C., in May 1935, Rutherford declared flag salutes to be inconsistent with the Biblical injunction in Exodus against worshipping graven images.⁸ On September 20, 1935, an eight-year-old boy in Lynn, Massachusetts, refused to participate in a flag salute and later was expelled from school. Rutherford elaborated on the flag salute doctrine and praised the boy during a national radio broadcast on October 6 and in various Watch Tower publications.⁹ By the end of the 1935-1936 school year, more than 100 Witness children had been expelled from public schools for refusing to salute the flag and recite the Pledge of Allegiance as demanded by school officials or required by state law. The number of expulsions had exceeded 200 in eighteen states by 1940.¹⁰

⁶For a history of the American Legion’s role in promoting patriotism and in the Pledge of Allegiance controversies involving Jehovah’s Witnesses, see William Pencak, *For God and Country: The American Legion, 1919-1941* (Boston: Northeastern University Press, 1989); and Raymond Moley, *The American Legion Story* (NY: Duell, Sloan & Pearce, 1966).

⁷M. James Penton, *Jehovah’s Witnesses and the Third Reich* (Toronto: University of Toronto Press, 2004).

⁸“Account of the Convention of Jehovah’s Witnesses at Washington, D.C. May 30-June 3, 1935,” *Golden Age Magazine*, July 17, 1935; “The Courage to Put God First,” *Awake!*, July 22, 1993, p. 13; James F. Van Orden, “Jehovah Will Provide: Lillian Gobitis and Freedom of Religion,” *Journal of Supreme Court History*, 29 (no. 2, 2004): 136-145.

⁹*Loyalty: Caesar or God?* (Brooklyn: Watch Tower Bible and Tract Society, 1935), 78 rpm recording; *Golden Age Magazine*, October 23, November 6, 20, December 4, 1935.

¹⁰*Carleton B. Nicholls, Jr., v. Mayor and School Committee of Lynn*, 297 Mass. 65 (1937); *Gobitis v. Minersville School District*, 24 F. Supp. 271 (E.D. Pa., 1938). For an extended examination of the flag salute and pledge controversy in the United States, see David Roger Manwaring, *Render unto Caesar: The Flag-Salute Controversy* (Chicago: University of Chicago Press, 1962); J. F. Rutherford, *Conspiracy against Democracy* (Brooklyn: Watch Tower Bible and Tract Society, 1940).

The controversy eventually reached the United States Supreme Court, which issued an opinion in June 1940. In a case styled *Minersville School District v. Gobitis*, Justice Felix Frankfurter spoke for an eight to one majority upholding compulsory patriotic exercises in public schools:

The preciousness of the family relation, the authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom, presuppose the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties.¹¹

The lone dissenter in the *Gobitis* case, Justice Harlan Fiske Stone, saw the issue differently and called the salute requirement

unique in the history of Anglo-American legislation. It does more than suppress freedom of speech and more than prohibit the free exercise of religion, which concededly are forbidden by the First Amendment and are violations of the liberty guaranteed by the Fourteenth. For by this law the state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions.

Stone would have accommodated the religious scruples of Witness children, explaining that he could not “say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection.”¹²

The Court’s decision in the *Gobitis* case did not settle the issue. In fact, the constitutional conflict only intensified. Jehovah’s Witnesses held fast to their religious convictions, and, as the U.S. edged closer to war, school officials became more insistent upon the necessity of enforcing patriotic exercises. Led by the American Legion, many citizens felt that their patri-

¹¹*Minersville School District v. Gobitis*, 310 U.S. 586, 600 (1940).

¹²*Ibid.*, 601, 607.

otic impulses authorized legal and extralegal suppression of dissent, especially instances of nonconformity by Jehovah's Witnesses. Mob violence against Jehovah's Witnesses increased significantly. Meetings were disrupted, a Kingdom Hall was destroyed, and thousands of Jehovah's Witnesses were arrested over the next three years.¹³

Jehovah's Witnesses in Arkansas faced the same problems as those in other states.¹⁴ There were instances of mob action or physical violence against Witnesses in Walnut Ridge, Pocahontas, Harrison, Siloam Springs, Mountain Home, Huntsville, El Dorado, Glenwood, Russellville, and Little Rock. Adult members were arrested for publicly stating their beliefs about saluting the American flag in Texarkana, North Little Rock, and Marshall. Witnesses were arrested and convicted for distributing religious literature without a permit in Mena, Fort Smith, Harrison, Marianna, Helena, Sheridan, Hope, Wynne, Dardanelle, Eureka Springs, Green Forest, and Berryville. In Washington County, students were expelled from the Rock Springs and Cane Hill public schools for refusing to salute the flag and pledge their allegiance when ordered to do so by teachers and school officials.¹⁵

The scholarly literature on the legal and extralegal action against Jehovah's Witnesses in Arkansas is quite sparse. Shawn Francis Peters, in his excellent work, *Judging Jehovah's Witnesses*, mentions three instances of mob action in Arkansas, but his discussion of the flag salute controversies is limited primarily to cases in Pennsylvania and West Virginia that reached the United States Supreme Court.¹⁶ C. Calvin Smith devotes a few pages of *War and Wartime Changes* to persecution of Jehovah's Witnesses and their legal struggles in Arkansas, but there is no mention of children being expelled from school for refusing to participate in the flag pledge ceremonies.¹⁷ No one appears to have been aware of or have examined the flag salute controversy in Arkansas public schools.

¹³Shawn Francis Peters, *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution* (Lawrence: University Press of Kansas, 2000).

¹⁴*The Persecution of Jehovah's Witnesses: The Record of Violence Against a Religious Organization Unparalleled in America since the Attacks on the Mormons* (New York: American Civil Liberties Union, 1941).

¹⁵This article is drawn from a larger study of the experiences of Jehovah's Witnesses in Arkansas, 1913-1946. See *Cook v. Harrison*, 180 Ark. 546 (1929); *Cole v. Fort Smith*, 202 Ark. 614 (1941); *Johnson v. State*, 204 Ark. 476 (1942); and *Berry v. Hope*, 205 Ark. 1105 (1943) for Jehovah's Witness cases before the Arkansas Supreme Court.

¹⁶Peters, *Judging Jehovah's Witnesses*, 102, 117-120.

¹⁷C. Calvin Smith, *War and Wartime Changes: The Transformation of Arkansas, 1940-1945* (Fayetteville: University of Arkansas Press, 1986), 56-63.

Primary sources are equally elusive, but that is not particularly surprising, considering the nature of the controversy, the rural communities in which the incidents occurred, and the marginal position of the children involved. The *Northwest Arkansas Times* and the *Lincoln Leader* from the period provided no news stories or other information about incidents that occurred at Rock Springs School (District 60) and Cane Hill School (District 57) in rural Washington County between 1940 and 1943. The school board minutes from these two districts, which were consolidated with Lincoln School District, apparently no longer exist either at the Lincoln School District offices or in the archives at the Washington County courthouse. Instead, one must rely on the correspondence found in the American Civil Liberties Union (ACLU) Papers at Princeton University and oral history interviews and correspondence with students who attended Rock Springs and Cane Hill Schools during the time of the incidents, including three students who were expelled for refusing to participate in the Pledge of Allegiance.

Joanne Adair moved with her family from New Mexico to an eighty-acre farm on Jackson Road just south of the Rock Springs School in May 1940, when she was ten years old. Her mother was an active member of the Jehovah's Witnesses and within days discovered the Cane Hill Company of Jehovah's Witnesses. William Cannon was the company servant, and his home served as the Kingdom Hall.¹⁸ Soon thereafter, Mrs. Adair became involved with Witness activities and sold the *Watchtower* and other publications in the Lincoln area.

When the school term began in September, Joanne enrolled in the seventh grade class at Rock Springs, taught by Frank Remington. She recalls,

there was a lot of talk among the congregation about whether there would be a problem in the fall over the flag salute issue. I don't know what had been said to my parents before school began, but I was told to politely refuse to salute but that I was to stand while the other children saluted. I'm not sure how many days I went to school before I was expelled. Mostly I remember being embarrassed and wanting to cry. I also remember being frightened when I had to refuse to salute. I can't say I was afraid of the teacher but to this day I remember him tell-

¹⁸Joanne [Adair] Wootan to author, January 2, 2003; Gay Braly Patterson, telephone interview with author, September 3, 2004.

ing me I should be ashamed of myself and to go home. This is really the only recollection I have of him.¹⁹

Joanne was not allowed to return to school during the 1940-1941 or the 1941-1942 school years. Fortunately, her mother had been an English major in college and a school teacher in New Mexico before her marriage. She taught Joanne at home for the two years she was prohibited from attending classes. In the fall term of 1942, when she was twelve years old, Joanne attempted to return to the Rock Springs School but was again expelled and sent home by the teacher, Frank Remington.

Joanne's parents explained the Jehovah's Witnesses' religious objections to participating in the flag salute and the Pledge of Allegiance to both Remington and the Rock Springs School Board and requested, without success, that she be allowed to return to school. Her father, P. G. Adair, then sent a letter to the U.S. attorney for the Western District of Arkansas, Clinton R. Barry, in Fort Smith:

I am writing you in regard to trouble I am having on account of my twelve year old daughter, Joanne. On October 12, she was suspended from school on her refusal to participate in the flag salute ceremony, although she willingly stood to show respect while the others saluted. Joanne, as well as myself, is one of Jehovah's Witnesses and cannot conscientiously salute any flag or man made object. We have explained our stand to both the teacher and the school board, but they refuse to allow her to attend school.

Mr. Adair's letter suggested that since the family lived and paid taxes in the school district, they "should have the rights of other citizens. I understand that the Department of Justice has advised all United States District Attorneys to contact the responsible local authorities and direct their attention to the provisions of Section 7 of the Act of June 22, 1942 (Public Law 623) with the request that they conform their policies to the Congressional standard declared in that act, so as to excuse children who have notified their teacher that they have conscientious scruples against saluting."²⁰ The letter was referring to an act of Congress that for the first

¹⁹Wootan to author, January 2, 2003.

²⁰P. G. Adair to Clinton R. Barry, December 7, 1942, American Civil Liberties Union Papers, Seeley G. Mudd Manuscript Library, Princeton University, Princeton, NJ. Joanne Adair Wootan does not believe that the letter was written by either of her parents, but she is certain that her mother signed her father's name; Wootan to author, January 2, 2003. It seems likely that the letter was drafted by John Mayes, a Fayetteville attorney who represented other Jehovah's Witnesses in school expulsion disputes.

time codified the Pledge of Allegiance and other matters respecting the United States flag.²¹ The Department of Justice had advised United States attorneys that section seven of that act stated that “civilians will always show full respect to the flag when the pledge is given by merely standing at attention.” The Department of Justice further advised that the matter is “primarily a concern of the national government and there is, therefore, a very real question whether any legal regulation, ordinance, or statute prescribing a different measure of respect to the flag can be enforced.”²²

Adair’s letter to Barry continued, “Would their continuing to deprive me and my child the rights safeguarded by the Federal Constitution by refusing us the convenience of the public school, warrant you in taking steps against such school officials under provisions of Section 51 and 52 of Title 18, United States Code?”²³

No evidence exists that Barry ever responded to the letter, and it is unlikely that he did. Barry refused repeated requests from the United States Department of Justice and the ACLU to consider prosecuting local officials for violating the civil rights of Jehovah’s Witnesses in the Western District of Arkansas.²⁴ In an earlier letter to the ACLU, Barry suggested, probably correctly, that local juries would not convict officials for actions against Jehovah’s Witnesses, and he expressed his personal displeasure with both their religious tenets and their proselytizing activities.²⁵

Other events allowed Joanne Adair to return to the Rock Springs School, however. Shortly after Christmas in 1942, Frank Remington left to take a job in a defense plant. “A lovely young woman came to teach, and I was allowed to return to school. I finished the seventh grade that year,” Joanne recalls. Her return to school under a new teacher suggests that her two-and-one-half year expulsion might have been a decision made unilaterally by Frank Remington and only later supported by the school board, rather than a formal board policy. During the 1943-1944 term, Victor Danforth was hired as the teacher at Rock Springs, and Joanne fondly remembers, “Mr. Danforth had a degree from the Univer-

²¹*Act of June 22, 1942, United States Statutes at Large* 56 (1942): 380.

²²John Haynes Holmes and Karl N. Llewellyn to Kate Finley, January 8, 1943, ACLU Papers.

²³Adair to Barry, December 7, 1942, ACLU Papers.

²⁴Clinton R. Barry to Francis Biddle, November 25, 1941, U.S. Department of Justice, Civil Rights Division Papers, Records Group 60, National Archives and Records Administration, College Park, MD; Wendell Berge to Clinton R. Barry, December 31, 1941, *ibid.*

²⁵Clinton R. Barry to Clifford Forster, November 25, 1941, ACLU Papers.

sity of Wisconsin, and to me he was and still is the epitome of what a good teacher should be.”

Reflecting upon her particular experience and the teacher who expelled her, some sixty years later, Joanne insists, “I think when a teacher realizes that a student has markedly different beliefs and social mores than the other children in the room, the teacher should try to make the child as comfortable as possible and not try to enforce the ‘norm’ on that child.” “However,” she adds, “I’m not sure that many children are hurt too much from being teased because they are different. A lot of the damage is done because someone makes them think they should feel sorry for themselves because they are different and someone is making an issue of them being different.”

Regarding the community reaction to her refusal to salute and pledge allegiance to the flag or the other religious beliefs and activities of her family, Joanne recalls little hostility, though she admits this may be due to her age at the time. “I do remember the boys from across the road refusing to let me walk to and from school with them,” she says, but “I don’t recall any antagonism from any neighbors except the people across the road. The other people in the community invited us over for meals and came to our house to eat, and the men exchanged work with my father.” Nonetheless, the Adair family sold their farm and left Arkansas in 1944, returning to New Mexico.²⁶

Luther Thompson, a classmate of Joanne’s at Rock Springs, remembers that when Joanne refused to salute the flag or participate in the pledge, Frank Remington said he “wouldn’t stand for the behavior and sent her home.” He also recalls that some of the adults in the community would complain that Mrs. Adair was using her gasoline ration to distribute religious books and literature, while local farmers were having to cut back on the gasoline they needed for farm operations.²⁷

Another classmate, Alfred Reed, who lived across the road from the Adair family, recalls that Joanne “was kicked out because she wouldn’t stand and wouldn’t salute. They’d whip you back then. Jehovah’s Witnesses wouldn’t salute the flag because they didn’t believe in the United States. They’d say, ‘Hitler would rule the world.’”²⁸ Despite the fact that Hitler had banned the Bible Students (Jehovah’s Witnesses) in Germany, sent hundreds to concentration camps, and executed some who refused

²⁶Wootan to author, January 2, 2003.

²⁷Luther Thompson, telephone interview with Will McNair, June 10, 2002. In December 1942, class A gasoline ration cards, those for “nonessential” purposes, allowed three gallons per week for each household.

²⁸Alfred Reed, telephone interview with Will McNair, June 10, 2002.

to serve in the German Army, allegations that Jehovah's Witnesses supported Hitler—while completely unfounded and even refuted by the Department of Justice—circulated throughout the country during 1941-1943. In fact, while the Jehovah's Witnesses maintained a doctrine of neutrality with regard to the war, Joanne Adair Wootan, reflecting on her experience, says, "I believe the flag salute incidents made me more aware of what was important to me and made me think about how I felt about my country. And certainly after Pearl Harbor, I can remember wondering how anyone could refuse to fight for our country."²⁹

The Adair family had been the only Jehovah's Witnesses in the Rock Springs School District, but there were several Witness families with children attending the Cane Hill School. The flag salute and Pledge of Allegiance became issues there during the first week of school in September 1941.

Kathleen Cannon, then a bright eleven-year-old, stood silently beside her desk as her classmates saluted the flag and recited the Pledge of Allegiance. On Friday of the first week of classes, Principal Kate Finley sent Kathleen home for refusing to engage in the flag salute and Pledge.³⁰ Finley continued to send Kathleen home each day for several weeks before refusing even to allow Kathleen to enter the building. Yet neither Kathleen nor her family were ever told by Finley or the Cane Hill School Board that she had been suspended or expelled. Well aware that in other states Witness children sent home for refusing to participate in the Pledge of Allegiance had been declared truant, their parents arrested, and the children put in the custody of state welfare agencies, William and Francis Cannon contacted Fayetteville attorney John Mayes.³¹ On his advice, Kathleen continued to go to school each day. She was met each morning by Finley and denied entry to the building, and she would remain outside on the school grounds. In late January or early February 1942, her parents, fearing that she would suffer exposure from the cold weather, decided to keep her at home, where Mrs. Cannon, who had been

²⁹Wootan to author, January 2, 2003.

³⁰Kathleen Cannon Tackett, interview with author, Fayetteville, AR, June 22, 2002; William Cannon to Clinton R. Barry, October 21, 1942, ACLU Papers. Kate Reed Finley, who was married to Walter Finley, the postmaster at Lincoln, would later become principal at Lincoln High School.

³¹John Mayes had recently won a federal court case on behalf of Zone Servant E. C. Widdle against the city of Harrison, and Widdle was a friend of the Cannon family; *Widdle v. City of Harrison* (W.D. Ark. 1941), unreported, Record Group 21, National Archives and Records Administration, Fort Worth, TX. Richard Mayes remembered that his father would often take cases without pay whenever he felt constitutional rights were being violated; Richard Mayes, telephone interview with author, December 15, 2003.



Kate Finley as she appeared in the 1946-1947 Lincoln High School yearbook. *Courtesy Bob Keen and Shiloh Museum of Ozark History.*

a school teacher in Kansas before her marriage, assumed responsibility for Kathleen's education and reading assignments.³²

During the summer of 1942, following the Justice Department's advisory suggesting that students could show their respect by standing during flag exercises, the Cannons anticipated that their daughter would be allowed to return to school. When the term opened on September 14, Kathleen Cannon and other children of Jehovah's Witnesses were there for the first day of classes. Gay Braly was excited to be entering the first grade, but, before the week was out, she was no longer allowed to attend classes. After she and her twin brother, Ray, stood silently during the Pledge, they were called out of class by the principal, Kate Finley. Finley took them to her office and held their arms out to-

³²Tackett, interview.

ward the flag in the straight-arm salute that had been customary since 1892, reciting the words to the Pledge while the children cried.³³ Gay and Ray Braly were sent home and not permitted to return to class for the rest of the school year. Their older sister, Vinita, a high school junior who was suspended from Cane Hill School at the same time, moved to Fort Smith and entered a proprietary business college where no pledge was required. Violet Braly made an unsuccessful plea for reinstatement of her children to several school board members and prominent citizens in the community. One woman she approached snapped that Mrs. Braly and her children needed to “render unto Caesar what was Caesar’s!” Despite the hostility of Finley and community leaders, Gay Braly recalls that she and her brother remained friends with their classmates and played with them after school. Another former student remembers feeling sorry for the Braly children at the time because of what Finley had done to them.³⁴

Another young woman, Happy Pennel, was also sent home from school that week for refusing to salute the flag, but Kathleen Cannon was to have an even more traumatic experience that fall. Kathleen’s teacher, Mildred Whelchel, tried unsuccessfully to coerce her to salute the flag, then sent Kathleen to see the principal, Kate Finley. Finley told Kathleen to salute the flag, but Kathleen replied, “No, I give my allegiance to Jehovah God. I don’t give worship to the flag.” Finley responded, “Well, all you have to do is say I give my allegiance to God and my country, and you can go back to school; you can go back down.” The session in Finley’s office lasted for about an hour on that day, with Kathleen and Finley reiterating their positions until Kathleen was sent home for the day. A similar chain of events transpired two more times that week. On Friday, September 23, Finley’s patience wore out and her temper flared. She came into the classroom, demanded that Kathleen salute the flag, and shook her vigorously when Kathleen stood silent. Finley then took Kathleen into a cloakroom, where she beat the back of Kathleen’s legs with a black rubber hose.

³³Patterson, telephone interview. During the first fifty years of the flag salute and pledge ritual, students were to raise their right arm toward the flag. During World War II, the salute looked so much like that used in Nazi Germany that Congress recommended that civilians instead place the right hand over the heart and that uniformed military personnel salute with the hand above the right eye.

³⁴Patterson, telephone interview; John Skinner, telephone interview with Will McNair, June 10, 2002.

When she finished, Finley shoved Kathleen down the stairs and told her

not to come back to school.³⁵

Kathleen's injuries from the incident were more than minor. Her shoulder remained sore for two or three days from Finley's shaking her.³⁶ Furthermore, her father reported, "Mrs. Finley gave Kathleen such a severe whipping upon the back of her legs that there were angry red streaks and bruises from the bend of her knees to the ankles, which streaks were still visible Sunday Sept. 27th, a large bruise was visible Monday." She still had a scar on the back of one leg a month later.³⁷

Francis Cannon confronted Kate Finley about the beating of her daughter, but Finley still refused to let Kathleen return to school unless she would salute the flag and say the Pledge of Allegiance, a condition to which the family could not conscientiously agree. Furthermore, Finley told the Cannons that "she would not dismiss the child from school but that she would continue to punish the child every time she came back to school."³⁸ This threat of repeated physical punishment led the Cannons to keep their six-year-old daughter, Mary, at home that year, where Mrs. Cannon was responsible for her education.³⁹

Kathleen remembers her classmates displayed no animosity toward her. "They were kind to me. I didn't have any problems. I sure didn't. They played with me. They wanted to. After school was out, I would go over to the basketball court. I played with all of them," she recalls. The only problem seemed to be with the teachers and the principal, Kate Finley. "She didn't like Jehovah's Witnesses," Kathleen Cannon Tackett recalls, "and every time I would mention Jehovah's name, she just got furious." There was some resentment in the community of the neutrality of Jehovah's Witnesses toward the war. She remembers going door-to-door with her mother, distributing religious literature and asking to play phonograph records with religious messages. "Some people were very receptive, and some were not. And a lot of them

³⁵Cannon to Barry, October 21, 1942, ACLU Papers; Tackett, interview; Patterson, telephone interview; Mildred Whelchel Fletcher, telephone interview with author, September 7, 2004.

³⁶Cannon to Barry, October 21, 1942, ACLU Papers.

³⁷William Cannon to Clinton R. Barry, November 16, 1942, ACLU Papers.

³⁸Cannon to Barry, October 21, 1942; Cannon to Barry, November 16, 1942, ACLU Papers.

³⁹Tackett interview; Keith Cannon interview, Fayetteville, AR, June 22, 2002; Mary Cannon Mason, telephone interview, September 4, 2004.



The Cane Hill School in the 1940s. Photograph by Roy Nixon. *Courtesy Shiloh Museum of Ozark History.*

would say, ‘OK, I lost my son in the war.’ And my mother would say, ‘Well, we were not responsible for that because we don’t kill; we don’t take part in a war. We don’t kill our brothers and sisters. We love them.’”⁴⁰

The Cannons then met with the Cane Hill School Board to explain the family’s religious objections to the flag salute, to protest Finley’s physical treatment of Kathleen, to remind them that Kathleen had not been officially suspended or expelled from school, and to argue that she should either be expelled or be allowed to return to classes. “She is quite willing to go to school,” explained Kathleen’s father, “and we are quite willing to send her.” Board member Stanley Yates told them, “We don’t want to expel her, we want to whip her. We think another whipping might do her some good. We think it’s time she was being taught something. She isn’t being taught anything.” Board member Jim Pye-atte added, “We’re behind the teacher in every thing she does.”⁴¹ Mrs.

⁴⁰Tackett interview.

Cannon, a former school teacher, was appalled, not only at the sentiment expressed but also by Mr. Yates' pronouncement—"we want to *whup* her."⁴²

The Cannons then contacted their attorney, John Mayes. On October 21, 1942, William Cannon sent a letter, prepared with the assistance of his attorney, to Clinton S. Barry, the U.S. attorney in Fort Smith. Mr. Cannon carefully explained the family's religious objections to participating in the flag salute, which they believed to be prohibited by the Scriptural commandments in 1 John 5: 21 and Exodus 20: 3-5, and detailed Kathleen's experiences at Cane Hill School and their encounter with the school board. "We respectfully call your attention to the fact that the Federal Law passed by Congress has been violated by the school," he wrote, "and we understand that the Department of Justice has instructed all United States Attorneys to confer with local school officials in an effort to amend their flag salute regulations so as to permit children who have conscientious objections to be excused." In closing, Mr. Cannon said, "We respectfully request that you confer with the school authorities or otherwise take criminal action against the school principal, Mrs. Kate Finley, for violating sections 51 and 52 of Title 18 United States Code."⁴³

Mr. Cannon received no response from U.S. Attorney Barry, and it is uncertain whether Mr. Barry conferred with Cane Hill School officials. On October 26, five days after sending the letter, however, the Cannons were informed by Finley "that Kathleen was being temporarily suspended until she would agree and we would agree for her to take part in the flag salute exercise exactly as the other children did."⁴⁴

Although the Cannons were not aware of it, and likely neither were their attorney or the Cane Hill School authorities, a U.S. District Court in West Virginia on October 6 had ruled in favor of the First and Fourteenth Amendment claims of children of Jehovah's Witnesses who had been expelled by a local school for refusing to salute the flag. United States circuit judge John J. Parker, writing for a three-judge district court, explained that although the *Gobitis* decision was as yet unreversed, developments on the Supreme Court, including the concurring

⁴¹Cannon to Barry, October 21, 1942, ACLU Papers.

⁴²Tackett interview; Cannon interview.

⁴³Cannon to Barry, October 21, 1942, ACLU Papers. The "Federal Law" mentioned was the *Act of June 22, 1942*, 380, the same statute cited by P. G. Adair's letter, *supra* note 21 and explained in the accompanying text. The criminal statutes mentioned are essentially the same as the current federal statutes for violation of constitutional rights by public officials or employees, now codified as 18 *United States Code* § 1983.

⁴⁴Cannon to Barry, November 16, 1942, ACLU Papers.

opinion of Justices Black, Douglas, Stone, and Murphy in *Jones v. Opelika* that the *Gobitis* case was “wrongly decided,” suggested that it should no longer be considered binding authority on the lower courts.⁴⁵

Under such circumstances and believing, as we do, that the flag salute here required is violative of religious liberty when required of persons holding the religious views of plaintiffs, we feel that we would be recreant to our duty as judges, if through a blind following of a decision which the Supreme Court itself has thus impaired as an authority, we should deny protection to rights which we regard as among the most sacred of those protected by constitutional guaranties.⁴⁶

Furthermore, Judge Parker continued,

As fine a ceremony as the flag salute is, it can have at most only an indirect influence on the national safety; and no clear and present danger will result to anyone if the children of this sect are allowed to refrain from saluting because of their conscientious scruples, however groundless we may personally think these scruples to be. It certainly cannot strengthen the Republic, or help the state in any way, to require persons to give a salute which they have conscientious scruples against giving, or to deprive them of an education because they refuse to give it. As was well said by Justice Lehman of New York . . . “The flag is dishonored by a salute by a child in reluctant and terrified obedience to a command of secular authority which clashes with the dictates of conscience.”⁴⁷

Then, in even more forceful language, Judge Parker concluded,

The salute to the flag is an expression of the homage of the soul. To force it upon one who has conscientious scruples against giving it, is petty tyranny unworthy of the spirit of this Republic and forbidden, we think, by the fundamental law. This court will not countenance such tyranny but will use the power at its command

⁴⁵*Jones v. Opelika*, 316 U.S. 584 (1942). An Arkansas case concerning the distribution of literature had been consolidated with the *Jones* case; *Bowden et. al. v. City of Fort Smith*, 135 F. 2nd 981 (1943).

⁴⁶*Barnette v. West Virginia State Board of Education*, 47 F. Supp. 251, 253 (S.D. WVa, 1942).

⁴⁷*Ibid.*, 254-255.

to see that rights guaranteed by the fundamental law are respected. We . . . are clearly of opinion that the regulation of the Board requiring that school children salute the flag is void in so far as it applies to children having conscientious scruples against giving such salute and that, as to them, its enforcement should be enjoined.⁴⁸

Unfortunately for the Cannons, the West Virginia district court's decision had no effect in Arkansas, but they continued to pursue their legal rights with regard to the situation at Cane Hill School. Having had no response from either school officials or the U.S. attorney, William Cannon again wrote to Clinton Barry on November 16, 1942. Patiently, Mr. Cannon reiterated his family's religious objections to saluting the flag but insisted, "We highly respect the flag of the United States, and the high principles for which it stands, and show this respect by conscientiously obeying all the laws of the land that are in harmony with righteousness and not in conflict with God's laws. Kathleen also has made a covenant to do God's will and therefore has conscientious objections to saluting the flag." After explaining Kathleen's experiences and informing him of her recent suspension, he again stated his understanding that the Justice Department had advised that U.S. attorneys confer with local officials to amend the flag salute requirements and "conform with the spirit and letter" of the flag law of June 22, 1942. More specifically, he wanted U.S. Attorney Barry to encourage the Cane Hill School officials

to excuse children who have notified their teacher that they have conscientious scruples against saluting, so that the children will not be required to participate when the ceremony is held. We are asking that you act at once to inform local school officials with regard to the danger of unlawful interference by state officers with rights of citizens which the Federal Constitution safeguards, and that such unlawful interference may result in prosecution of school officers.⁴⁹

Again, Mr. Cannon received no response from Barry. So on December 26, 1942, he wrote to the ACLU in New York, enclosing copies of both letters he had sent to Barry detailing the problems Kathleen had experienced and anticipating that the ACLU might be willing to help. On January 8, 1943, in a letter signed by John Haynes Holmes as chairman

⁴⁸Ibid., 255.

⁴⁹Cannon to Barry, November 16, 1942, ACLU Papers.

of the board and Karl N. Llewellyn as chairman of the Committee on Academic Freedom, the ACLU told Cane Hill principal Kate Finley:

We are advised that your school board has expelled children of the religious organization known as Jehovah's Witnesses for refusal to participate in flag-saluting exercises. There is a serious question in law as to whether your board has such a right. The Department of Justice has advised District Attorneys throughout the country that in its opinion the act of June 22, 1942 concerning salute to the flag supersedes local regulation. Section 7 of that act states that "civilians will always show full respect to the flag when the pledge is given by merely standing at attention." The Department of Justice specifically states that the matter is "primarily a concern of the national government and there is, therefore, a very real question whether any legal regulation, ordinance, or statute prescribing a different measure of respect to the flag can be enforced."

After noting the West Virginia district court decision and the likelihood that the *Gobitis* decision might soon be reversed by the Supreme Court, they continued, "We understand that the children of Jehovah's Witnesses are willing to stand at attention, as provided by the Federal Statute. It would seem that this is a simple and reasonable solution which merits the attention of your board. May we urge your reconsideration?"⁵⁰

There is no indication that Kate Finley or the Cane Hill School Board reconsidered their policy or that they ever responded to the letter from the ACLU. Kathleen Cannon and the other Jehovah's Witness children were not allowed to return to school during the 1942-1943 school year. While they were being taught at home that spring, the West Virginia case, now styled *West Virginia State Board of Education v. Barnette*, was on appeal to the U.S. Supreme Court. Oral arguments in the case were heard on March 11, 1943.

On Flag Day, June 14, 1943, the Supreme Court held that compulsory flag salute exercises were unconstitutional under the First and Fourteenth Amendments to the United States Constitution. In one of the more elegant opinions ever delivered by the Court, Justice Robert Jackson first put the flag controversy in historical perspective. "Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon[,] but at other times and

⁵⁰Holmes and Llewellyn to Finley, January 8, 1943, ACLU Papers.

places the ends have been . . . particular plans for saving souls.” Regarding compelled patriotism, Jackson suggested,

[The] ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity . . . down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.⁵¹

“The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own,” Justice Jackson continued.

Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great.

Then, he explained, that “freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.” In concluding, Justice Jackson wrote words particularly relevant to the actions of officials at Rock Springs and Cane Hill Schools and that should be remembered by public officials today: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”⁵²

⁵¹*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 640-641 (1943).

⁵²*Ibid.*, 641-642.

Justice Hugo Black, who had voted with the majority in the *Gobitis* case in 1940, now joined in reversing that decision and in a concurring opinion addressed the folly of forcing school children to participate in the flag ceremonies. "Words uttered under coercion are proof of loyalty to nothing but self-interest," he noted. "Neither our domestic tranquility in peace nor our martial effort in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation." Then, with his characteristic insight into matters of civil liberties, Black explained, "The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose."⁵³

When classes commenced at the Cane Hill School in September 1943, Kathleen, Mary, and Keith Cannon and Gay and Ray Braly returned to school without incident and without receiving an apology from Kate Finley or the Cane Hill School Board. While their constitutional liberties were eventually recognized and protected as a result of the Supreme Court decision in *West Virginia State Board of Education v. Barnette*, the experiences of the Jehovah's Witnesses at Cane Hill and Rock Springs illustrate the personal anguish and suffering that those who hold unpopular views and opinions, even children, can be made to endure by public officials who would ignore the Constitution and abuse their power in the name of patriotism.⁵⁴

Thomas W. Burns, a staff attorney for the Council of School Attorneys, acknowledged in 2002 that "*Barnette* and its progeny make clear that any school district or state adopting a Pledge of Allegiance policy or law should avoid coercing participation or punishing refusal to participate in any aspect of the flag ritual, including, standing, saluting the flag, and reciting the pledge." Furthermore, he advised school officials, "By making participation voluntary, schools not only will be avoiding First Amendment litigation, but will also be teaching children that tolerance of dissenting views does not threaten American values, but rather strengthens them."⁵⁵

Unfortunately, such advice has gone unheeded. Sixty years after the U.S. Supreme Court declared that requiring students to pledge allegiance

⁵³Ibid., 644, Black, J., concurring.

⁵⁴Before the decade was out, the Cannon children and the Braly children had moved out of the community, but they are still active Jehovah's Witnesses. Of the experience, Kathleen Cannon Tackett said, "It made me stronger;" Tackett interview.

⁵⁵Thomas W. Burns, *The Pledge of Allegiance: Teaching Tolerance for Political and Religious Dissent* (Alexandria, VA: National School Boards Association, 2002), 5.

and salute the flag was an unconstitutional violation of the First and Fourteenth Amendments, the Arkansas General Assembly passed Act 1333 of 2003. The act mandates that the “State Board of Education shall adopt a policy to require that public school students in grades kindergarten through twelve participate in a daily recitation of the Pledge of Allegiance during the first class of each school day” and that “students shall stand and recite the Pledge of Allegiance while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform.”⁵⁶ The law specifically exempts students with religious objections, but its provision that such students “shall be required” to quietly sit or stand during the Pledge renders it constitutional suspect.⁵⁷

It is not particularly surprising that state legislators would support such a measure. Promoting patriotism is usually good politics, more so than is defending dissent or the core principles of the First Amendment, and many no doubt believe that compelling school children to begin each day by saluting the flag and pledging their allegiance will serve some appropriate and worthwhile public purpose. Whether that assumption is true, or whether we have forgotten the past, failed to heed important lessons about the consequences of enforced orthodoxy, and are doomed to repeat the experiences of such projects that stigmatize minority viewpoints, remains to be seen.

⁵⁶Act 1333 of 2003, Section 1, *Arkansas Code Annotated* § 6-16-108 (2003). H. B. 2388, by Rep. Jim Medley (R-Fort Smith), passed the House of Representatives 84-7; *House Journal*, 84th General Assembly, March 21, 2003, p. 4136. Handled in the Senate by Sen. Denny Altes (R-Fort Smith), the bill passed 24-11; *Senate Journal*, 84th General Assembly, April 3, 2003, p. 5150.

⁵⁷An almost identical 2003 Colorado statute (22-1-106) was enjoined by U.S. district judge Lewis Babcock. The temporary restraining order was extended at the request of the Colorado attorney general to allow the legislature opportunity to amend the law, which it did in 2004, merely requiring school districts to provide a daily opportunity for students and teachers to say the Pledge, instead of *requiring* them to recite it daily. Colorado Legislative Council Staff, *Issue Brief*, No. 04-06 (30 June 2004). Also see *Sheldon v. Fannin*, 221 F. Supp. 766 (D. Ariz. 1963) (students cannot be expelled for refusal to stand during singing of the national anthem); *Lipp v. Morris*, 579 F.2d 834 (3rd Cir. 1978) (students cannot be required to stand during Pledge of Allegiance); *Rabideau v. Beekmantown Central School District*, 89 F. Supp. 2d 263 (N.D.N.Y. 2000) (students cannot be required to stand or be punished for not doing so); *Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004) (a principal does not have immunity for disciplining student refusing to salute flag and pledge allegiance); *Circle School v. Phillips*, 270 F. Supp. 2d 616 (E.D. Pa. 2003), affirmed *sub. nom.* *Circle School v. Pappert*, 2004 U.S. App. LEXIS 17569 (3rd Cir. August 19, 2004) (parental notification of students opting out of Pledge of Allegiance chills student speech rights; state statute requiring private schools to conduct pledge ceremony violates First Amendment rights of parents and schools).

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