

The Blumenfeld Education Letter

"My People Are Destroyed For Lack Of Knowledge" HOSEA 4:6

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The purpose of this newsletter is to provide knowledge for parents and educators who want to save the children of America from the destructive forces that endanger them. Our children in the public schools are at grave risk in 4 ways: academically, spiritually, morally, and physically — and only a well-informed public will be able to reduce these risks.
"Without vision, the people perish."

The Nalepa Case: Educators Can Now Cause the Death of a Child and Get Away With It

Back in April 1990, we published the following story from the *Detroit News* of 3/27/90 under the title "Boy Hangs Self After Seeing Suicide Film in School." It reads:

An 8-year-old boy hanged himself on 3/24/90 in Canton, Michigan, one day after seeing a film on suicides shown to his class. Stephen Nalepa was found by his brother Jason about 9:30 p.m., Saturday, dangling by a belt from his bunk bed, his feet barely an inch off the floor.

Stephen's shocked parents, Larry and Debby Nalepa, said their son's hanging may have been an accident inspired by a movie on suicides shown to his class Friday at Gallimore Elementary School in Canton.

"A sequence in the movie depicts a child who is depressed trying to commit suicide by hanging from a belt and being saved at the last minute," Debby Nalepa said. "Less than 24 hours later, this happens."

Stephen had never played with belts before and wasn't depressed like the child in the movie, said his mother, a nurse at Garden City Osteopathic Hospital, who tried in vain to revive him.

"He was always imitating and mimicking because he was always so adept at everything," she said. "The principal told me the essence of the movie is to show that life is worth living, but what really angers me is she admitted she had not even screened the film to see if it is appropriate for 8-year-olds."

Three officials at Plymouth-Canton Community Schools said they had never heard of the movie and refused to comment.

Debby Nalepa said Stephen stayed home to watch a vintage movie, *Titanic*, but became bored and went upstairs to play. About 9:30 p.m., she sent her older son, Jason, to get Stephen.

"That's when we heard this blood-curdling scream," Larry Nalepa said. "I ran upstairs and found Jason trying to hold Stephen up."

"His feet were only this far from the floor," Nalepa said, holding his forefinger and thumb barely an inch apart. "I took him down, and Debby started CPR (cardiopulmonary resuscitation) while Jason dialed 911. EMS came quickly and worked on him a whole hour, but it was too late."

Stephen, who had an IQ of 130, was an outgoing child who played soccer and basketball, collected baseball cards and took art and music classes.

On Nov. 8, 1990, the Nalepas filed a wrongful death cause of action in Wayne County Circuit Court against the following parties involved in the production, distribution, and showing of the film: Encyclopedia Britannica (distributor), Osmond Productions (producer), the Wayne Oakland Library Federation (which obtained the film from defendant Wayne County Intermediate School District, and which distributed the film to the Plymouth-Canton Community Schools), the Plymouth-Canton School Board, Dr. Jacqueline Hisey (school psycholo-

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gist), Shirley Spaniel (executive director of elementary education), Jane Armstrong (Stephen's teacher), Norma Foster, and Alice Brown (second-grade teachers who showed the film to the three second-grade classes). On May 16, 1991 the Nalepas' attorneys requested a trial by jury but were denied it by the court.

The Lethal Film

The film, entitled "Nobody's Useless," is about a child named Andy who had a leg amputated after falling in a barn where he was forbidden to play. In the film, Andy attempts to commit suicide twice, once by having a friend push him into a body of water while tied inside a burlap sack, and once by attempting to hang himself with a noose around his neck, attached to the rafters in a barn. Andy's friend attempts to push the bail of hay on which Andy was standing so that Andy would be hung. In the movie, Andy was saved by his friend's older brother, who happened to walk into the barn at a fortuitous time. The movie ends with Andy enjoying new-found acceptance from friends and family.

On March 23, 1990, Stephen Nalepa's second grade class viewed the film along with two other second-grade classes. Encyclopedia Britannica had recommended the film for grades 4 through 9.

Teachers Ignore Own Rules

Why was the film shown to second graders, and why weren't parents notified that the film was going to be shown? Both Shirley Spaniel, the executive director of elementary education and the plaintiffs' expert Dr. Burnis Hall, Jr., of Wayne State University, agreed that the film was not an appropriate resource for use in Stephen's

second-grade social studies curriculum. According to Hall:

Using, or permitting the use of, the film "Nobody's Useless" for second grade students without previewing, without requiring or receiving approval or without preparation of students would constitute a serious breach of duty amounting to gross negligence on the part of the teachers and administrators who are Defendants in this lawsuit.

According to the complaint:

All of the rules were broken when the film "Nobody's Useless" was shown to the second grade students at Gallimore School without preview, without approval from the principal and with questionable, if any, relationship to the curriculum it was supposed to support. . . . Attempted suicide is a confusing concept to introduce to young minds. It is an understatement to say that the introduction of attempted suicide is controversial. Defendants had certain procedures to follow if potential confusion or controversy might arise from the use of certain "educational materials." None of these procedures were followed and the most devastating personal injury to an elementary student followed.

Was Stephen Suicidal?

What about Stephen Nalepa? Was he at all suicidal? At the insistence of Debby Nalepa, Stephen had been referred to the schools' psychologist, Dr. Jacqueline Hisey, for testing because he was a "bright boy with poor work production." The testing was done in November 1989, using the Wechsler Intelligence Scale (WISC-R), Bender-Gestalt, and the Kaufman Test of Educational Achievement (K-TEA). The report states:

The kindergarten teacher . . . found that Stephen was enthusiastic, as well as an interesting, creative boy when involved in activities that he enjoyed, such as art. However he needed to "tend to work." . . . He was seen by the agency social worker who diagnosed "performance anxiety" and who thought Stephen might qualify as Emotionally Impaired under special education guidelines. Stephen is now a second grader and continues to have the same problems that

prompted the initial Child Study referral. His present teacher, like his previous teachers, describe him as a bright boy with good skills who produces very little.

... Stephen approached the performance items with logic and insight. His language was mature and thought processes well organized and devoid of any loose tangential thinking. . . . In the interview he stated that school was "too easy" but then he didn't know why he had trouble getting his work done. . . . His stated interests are age appropriate. He likes hockey, soccer and collecting baseball cards. When confronted about some inappropriate language at school he said he learned it from an older boy.

Stephen, on the WISC-R, obtained a Verbal IQ of 123 in the Superior range, a Performance IQ of 132, in the Very Superior range and a Full Scale IQ of 131, also in the Very Superior range of intellectual functioning. . . . His performance in Object Assembly is outstanding and Stephen's explanation was "I like to do puzzles." The high was a result of motivation, superb planning strategies and puzzle experience. . . . He has good understanding of cause/effect and can sequentially put events together into a meaningful whole. . . . In essence, Stephen is very well endowed intellectually and uses his intelligence efficiently.

Canton's OBE Curriculum

What was the cause of Stephen's inattentiveness, his slowness in getting the work done? Perhaps it had something to do with the school's curriculum. The Plymouth-Canton Schools had adopted Outcome-Based Education and Mastery Learning in 1982. In fact, a six-page Board of Education Policy Statement of Oct. 26, 1982 (Policy No. 3709) outlines the district's Philosophical Principles and Practices. It states:

Mastery Learning assumes that virtually all students can learn, and that learning can be improved greatly, providing favorable learning conditions are present. In its "Statement of Philosophical Principles Underlying Outcome-Based Schooling," the Network for Outcome-Based Schools claims that almost all students are capable of achieving excellence in learning the essentials of formal schooling and that the instructional process can be changed to improve learning.

The fact that Stephen found school to be "too easy," is an indication that he was bored with the dumbed-down OBE curriculum. But it was obvious that he was highly intelligent, and that is why he was tested on the morning of his death to see if he qualified for the Talented and Gifted Program. If he were suicidal, would there not have been some indication of emotional trouble that morning? According to his parents, Stephen was not at all suicidal. He died of asphyxiation by hanging, in an act of imitative self-injury.

Mrs. Egan's Affidavit

Nor was Stephen the only child who had sought to imitate what he had seen in the film. The Plaintiffs had obtained an affidavit from Mary Jane Egan, another parent who had a son at the Gallimore School. The affidavit, sworn to on Sep. 9, 1992, reads:

I, Mary Jane Egan, make this Affidavit based on personal knowledge and am competent to testify regarding the facts stated herein:

1. My son, James Egan (Jimmy), has been a student in the Plymouth-Canton schools from 1983 through the present.

2. He was a student at Gallimore school from 1983 through 1988.

3. While he was a student at Gallimore school, Jimmy saw the movie "Nobody's Useless."

4. Shortly thereafter, my daughter Janie telephoned me at work and said that Jimmy had just tried to kill himself by climbing on top of a freezer in the basement, tying a noose around his neck and pretending to jump. When I came home and asked why Jimmy had done this, he said because the boy did it in the movie Jimmy had seen at school.

5. I went to Gallimore school and told the principal, Joyce Deren, what Jimmy had done at home.

6. Mrs. Deren said that Jimmy's actions could not possibly be connected to the movie and she said I was making far too much of the situation.

7. Mrs. Deren further said that the school board believed "Nobody's Useless" was an excellent film.

Apparently, the film had been shown

for a number of years with no concern on the part of the educators for its possible negative effects on the students. An affidavit from Encyclopedia Britannica stated that the film was released for distribution in 1980 and that by 1990 it had been shown to at least 1,800,000 children without a claim ever having been made by anyone against the distributor.

Educational Malpractice

However, an affidavit from child psychiatrist Dr. David Shaffer of Columbia University's College of Physicians and Surgeons, left no doubt that a film of this kind could produce tragic results. Dr. Shaffer stated:

I have conducted extensive research and studies on adolescent suicide and foreseeable acts of imitation and have examined the incidence data for suicide among eight year old children.

I have conducted a psychological autopsy concerning the death of Stephen Nalepa which occurred on or about March 24, 1990, [and] I have viewed the film "Nobody's Useless" and am aware that Stephen Nalepa viewed that film on or about March 23, 1990.

It is my professional opinion that there is a probability that under appropriate circumstances an elementary school student who viewed the film "Nobody's Useless" could attempt to imitate the suicide scenes depicted in the film. It is my professional opinion that the death of Stephen Nalepa on or about March 24, 1990 resulted because he viewed the film "Nobody's Useless" the previous day.

My conclusion is based on an examination of the incidence data for suicide among eight year old children in the United States; the similarity between Stephen's death and the scene depicted in the film; and the close proximity in time between Stephen viewing the film and his death.

It is my professional opinion that Stephen Nalepa's death on March 23, 1990 would not have occurred had he not viewed the film "Nobody's Useless" the previous day. It is my professional opinion that there is nothing in the psychological autopsy which I conducted of Stephen Nalepa which would suggest that he was suicidal or that his death would have occurred had he not seen the film "Nobody's Useless." It is my professional opinion that prior to viewing the film "Nobody's Useless" Stephen Nalepa was not suicidal and that his death

constituted an act of imitation.

It seemed like an open and shut case. The educators were guilty not only of negligence in their failure to protect the health and safety of a student, but they were guilty of educational malpractice in showing a film to second graders which the distributor had recommended for 4th to 9th graders. In addition, the educators had failed to obtain parental approval before showing this obviously emotionally charged film. Also, a parent had warned the principal of the fact that her son had imitated the suicidal child in the film and had almost killed himself. And considering the fact that educators are constantly reminding us of how much better they know child psychology than those of us without teaching degrees, one would have expected them to be especially cautious in what they exposed their young charges to. Thus, the picture we get of the Plymouth-Canton educators is one of ignorance, incompetence, carelessness, and unprofessionalism. No wonder the public has lost faith in public education.

In addition, we expect educators to be able to foresee the possible consequences of school activities that arouse strong emotional reaction on the part of the students.

Thus, Stephen's educators had a duty to foresee the possible imitative actions that an 8-year-old viewer of the film might engage in. And inasmuch as Stephen was compelled to see the film, and that the relationship between Stephen and the educators was custodial, their duty was to make sure that they did nothing that could harm any child in their charge including one who might imitate the character in the film.

The Copy-Cat Effect

One of the reasons why the news media have tended to play down teen suicides is

because of the copy-cat effect. It is widely known that even adults are subject to the copy-cat effect. But children are forever imitating others in their games and play. For educators to pretend that such imitation is so rare that no cautions need be taken to protect children from their own imitative tendencies is to suggest that other motives were involved in their lapse of ordinary caution.

Early in the litigation, the court dismissed the case against Encyclopedia Britannica because its relationship to the deceased was too remote. They were not Stephen's custodians. That was the same argument used by the manufacturers of "Dungeons and Dragons" in *Watters v TSR* (1990), in which the parents of a youngster who had committed suicide blamed "Dungeons and Dragons" as the cause. The court ruled in favor of the manufacturer because the latter was not the custodian of the youngster at the time of his death or at any other time in proximity to his death.

However, in Stephen Nalepa's case, the educator-custodians actually showed Stephen the film that led to his death. But shouldn't Encyclopedia Britannica have warned the educators of the possible negative effects of the film on very young children, just as drug manufacturers dutifully warn users of the possible side effects of a drug, and cigarette manufacturers are required to warn smokers of the possible harmful effects of smoking?

To sum up the Plaintiffs' case: the educators were guilty of gross negligence of their custodial duty to care for the well-being of their students; the educators failed to foresee the possible harmful consequences of showing the film to impressionable 8-year-olds; the defendants could not possibly seek the protection of the First Amendment in this case since the child had been compelled to view the film and the film itself was recommended for older children.

The Educators' Defense

How did the educators defend themselves? The defendants' attorneys first cited the court's summary dismissal of the case against Encyclopedia Britannica which ruled that the defendant "owed no duty to Plaintiffs and that imitative suicide is not a foreseeable risk of harm as an act of self destruction breaks the chain of legal causation." The attorneys then argued that "Allowing the civil action to continue and/or the imposition of civil damages against these Defendants would violate the right of free speech guaranteed by the First Amendment of the United States Constitution, resulting in self-censorship of educational materials falling within the curriculum of the school district." In their Argument, the attorneys wrote:

The Defendant teachers involved in this litigation, including Jane Armstrong, Norma Foster and Alice Brown are likewise entitled to summary disposition as no duty existed on their part to refrain from showing the film in question. The conduct of the Plaintiffs' decedent simply was not foreseeable to give rise to such a duty. The teachers herein cannot be held liable for the self-destructive act of Plaintiffs' decedent. . . .

The complaint filed by Plaintiffs herein alleges duties that resemble teacher malpractice and not those dealing with personal injury proximately caused by a teacher. . . . However, . . . Michigan law does not recognize teacher malpractice as a theory of recovery.

And so, the defendants' case rested on the denial of the duty to protect the child from possible harm resulting from viewing the film, that such duty resembles teacher malpractice which the state of Michigan does not recognize as a theory of recovery, and that requiring the teachers to engage in censorship of instructional materials violated their First Amendment rights to freedom of speech. Would a jury have absolved the defendants on the basis of these flimsy argu-

ments? In any case, the Court ruled against the Nalepas and in favor of the educators.

In clearing Encyclopedia Britannica, the judge wrote:

The question involved is then whether defendant distributor [Encyclopedia Britannica] was under a duty to warn as articulated in plaintiff's complaint to avoid the contingency of an imitative suicide as allegedly occurred in the instant case. No legally compelling nor logically persuasive authority has been presented by the plaintiff tending to establish the type of duty invoked herein. The weight of authority in cases of this sort rejects imposition of such a duty, finding that no duty to warn exists, that susceptibility to suicide is not foreseeable in such circumstances and that the act of self destruction typically constitutes a break in the chain of legal causation Accordingly defendant Encyclopedia Britannica's motion for summary disposition shall be granted. (Signed Samuel A. Turner, Circuit Judge, Feb. 28, 1992)

The Educators Win

On Nov. 9, 1992, Judge Turner dismissed all of the complaints against all of the other defendants. He insisted on viewing Stephen's death as a simple suicide and not an imitative act resulting in accidental death by asphyxiation. All of the evidence indicates that Stephen had no intention of killing himself. Nevertheless, the judge, in a semi-literate opinion, wrote:

First, although defendants herein owed plaintiffs' decedent a duty of reasonable care, as a matter of law that duty did not include an obligation to view and thereafter decline to exhibit the subject film based on the contingency that a student might resultingly commit suicide.

Second, on the basis of the record as made the Court finds that the result that in fact occurred (i.e. the suicide) was not as a matter of law foreseeable.

Third, the suicide, as a matter of law constituted a break in the chain of causation.

The Judge also agreed with the defendants that they were protected by the First

Amendment to the Constitution. He wrote:

In response to plaintiffs' claims defendants-movants submit 1) that they are not beholden to any duties such as those alleged by the plaintiff and 2) the free speech clause of US Const, Amend I enjoins the type of action herein sought to be maintained. Inasmuch as the first issue is, of itself, dispositive, the constitutional question need not be reached.

Teachers Destroy Evidence

The Nalepas were devastated by Judge Turner's opinion, and took the case to the Court of Appeals. There had been many difficulties in this case. For example, the Nalepas had had great trouble obtaining documents from the educators, such as the lesson plans of the teachers who had shown the film. The complaint reads:

[The] Defendants are attempting to justify the use of the film by representing that it was a supplemental resource used to support the Social Studies curriculum. There is clearly a fact question as to what curriculum the film allegedly supported. If the film was utilized as a curriculum resource, Plaintiffs are entitled to know whether Defendants Foster, Armstrong, and Brown referred to any specific curriculum in their lesson plans or in the summary of their plans. Clearly Plaintiffs have substantial need of any written explanation or justification regarding why the film was shown, why it was unpreviewed and why second graders were required or permitted to view it.

In addition, Plaintiffs are unable, without undue hardship, to obtain the substantial equivalent of the written explanations by other means. The three Defendants testified at deposition that they destroyed their lesson plans. Thus, the only evidence pertaining to the lesson plans and/or why the film was shown would be found in documents supplied to the investigator employed by the Defendants' insurer in or about March, 1990.

At her August, 1991 deposition, Defendant Foster admitted that she had prepared a write-up, in March, 1990 which is a close recollection of what was in her lesson plans regarding the showing of the film. She then destroyed her lesson plans. When Plaintiffs' counsel attempted to inquire as to the contents of the write-up, defense counsel objected and refused to allow Ms. Foster to answer the question.

Foster admitted that she copied both Social

Studies and Health curriculum when she prepared a write-up of activities surrounding the showing of the film. Indeed, Foster herself confused the written summary with her lesson plans and subsequently changed sworn interrogatory answers. Initially, Foster said she gave her lesson plans to her principal then changed and said she gave a written summary of the plans to her principal.

Defendant Armstrong [Stephen's teacher] also testified at deposition that she had destroyed her lesson plan book for the 1989-1990 school year. She has no recollection of what was in her lesson plan book for the day the film was shown, March 23, 1990.

Defendant Brown testified at deposition that she had prepared handwritten notes regarding why the film was shown and gave them to Ms. Deren, the principal of Gallimore School. The handwritten summary included pages from the curriculum which dealt with the subject, and thus came out of her lesson plans, but she could not recall the content of the summary. She has not retained her lesson plans.

Obviously, the lesson plans were destroyed by the defendants because they contained incriminating evidence. Such destruction of evidence is known as obstruction of justice. Half of Nixon's staff went to jail for that, and the President himself was forced to resign for obstructing justice. Also, what teacher destroys her lesson plan book for the entire preceding year? "The teachers cannot recall what was in their lesson plans, they have destroyed the lesson plans, they admittedly prepared summaries based on those lesson plans, and their attorney would not let them testify at deposition as to the contents of the summaries which they prepared," stated the Plaintiffs' counsel.

The "Health" Curriculum

On Aug. 9, 1991, the Court ordered the Defendants to produce copies of all written explanations, descriptions, justifications, or writings of any kind prepared by the defendants pertaining to the showing of the film. It seems that the film had been shown in conjunction with the second grade health curriculum, in particular, the feelings and

emotions section. The feelings and emotions section is part of OBE's affective domain. Professor Benjamin Bloom, godfather of Outcome-Based Education, asserted that it was necessary to get to the children as early as possible. He wrote in his Taxonomy concerning the affective domain:

The evidence points out convincingly to the fact that age is a factor operating against attempts to effect a complete or thorough-going reorganization of attitudes and values. . . .

The evidence collected thus far suggests that a single hour of classroom activity under certain conditions may bring about a major reorganization in cognitive as well as affective behaviors.

Were the educators at the Gallimore School trying to prove the correctness of Bloom's theory by showing the film to second graders? And had Stephen Nalepa experienced a major reorganization in cognitive as well as affective behavior because of his viewing the film?

Finally, on November 23, 1994, the Court of Appeals announced its decision. It dismissed the Nalepas' case against all of the defendants. The Court had decided that the school district and the superintendent were "entitled to absolute governmental immunity from tort liability when acting within the scope of their authority. . . . The film dealt with mental health issues, about which our state has evinced a concern." Concerning Encyclopedia Britannica and the rest of the defendants, the judges wrote:

We find that Encyclopedia Britannica did not undertake a service to benefit the schools or the children. Thus, we agree with the circuit court that defendant Encyclopedia Britannica did not owe plaintiffs or Stephen a duty of care.

With respect to the remaining defendants — the principal, teachers, counselors and other staff members — we conclude that although a duty of care exists, that duty does not extend to the actions of these defendants, which allegedly caused Stephen's death.

Although Michigan recognizes a teacher's common law liability for a student's injuries prox-

mately caused by the teacher, public policy must be considered in determining to what type of actions that duty extends. . . . Michigan law is clear that the duty does not extend to educational malpractice. . . .

The rationale for declining to recognize claims of teacher malpractice stems from the collaborative nature of the teaching process. See *Ross v Creighton University*. . . . For a positive result to obtain, both teacher and student must work together. The ultimate responsibility for what is learned, however, remains with the student, and many considerations, beyond teacher misfeasance, can factor into whether a student receives the intended message. . . .

Even if the harm appears to flow from the alleged malpractice, for public policy reasons, we would still decline to recognize a duty. We agree with the Supreme Court of Wisconsin's statement in another educational malpractice case:

"Even where the chain of causation is complete and direct, recovery may sometimes be denied on grounds of public policy because . . . allowance of recovery would enter a field that has no sensible or just stopping point." . . .

Further, we conclude that recognizing this cause of action could lead to a flood of litigation which would be detrimental to our already overburdened educational system. . . . Finally we do not wish to embroil our courts into overseeing the day-to-day operations of our schools.

We conclude that the decision to show the film was based on academic factors. Therefore, any cause of action arising from that decision must fit within the educational malpractice genre. As a result, we agree with the trial court that the remaining defendants' duty of care did not extend to utilizing an allegedly improper teaching device. . . .

Plaintiffs' complaint is dismissed.

In other words, the educators can cause irreparable harm to a child and get away with it because the state does not recognize educational malpractice to be a cause of legal action. Apparently, educators need this protection, because what is being taught in sex education can lead to harmful consequences for many students, and how reading is taught in most public schools clearly causes the reading disability known as dyslexia, and the drugging of children with Ritalin may also cause serious harm to some children. So the educators need all the immunity they can get from the courts as

they engage in blatant and outrageous educational malpractice. The state judicial system operates not to protect children, but to protect educators.

Thus, parents should be aware that when they put their children in the hands of public educators, they are putting them at grave risk. In fact, the Nalepa case provides home-schoolers with a very strong argument against any government regulation of their children's education, for the government education establishment cannot be held liable for educational malpractice.

A Promising Life Lost

On Saturday morning, March 24, 1990, the last day of his life, Stephen Nalepa was tested to see if he qualified for the talented and gifted program. Terri Michaelis, the program coordinator, provided an account of how Stephen behaved. She wrote:

Mrs. Nalepa also asked me to comment on my recollection of Stephen during the testing on March 24th. I picked up the students at the front of the school. Stephen first came to my attention when I called the roll from my list to see if I had everyone I should. Stephen corrected my mispronunciation of his last name self-confidently. He sat directly in front of my desk. He was active during testing with a lot of moving in his seat during the test. There were three short breaks while testing, during which he moved about with others and chatted at my desk. He tried hard and seemed to want to do well. He finished the test. The whole group left chatting and my memory is that Stephen was glad the test was over and as eager as the rest of the group to go home and play on a sunny Saturday. My memory of Stephen is that of a bright energetic second grader.

Despite all that the courts did to clear the educators of any wrongdoing, Debby Nalepa knows that if Stephen had not seen that film in class on March 23, 1990, he'd be alive today.