

# The Constitutionality of Teaching Islam: The University of North Carolina Qur'an Controversy<sup>1</sup>

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## *Introduction*

THE terrorist events of 9/11 sparked public interest in Islam across the U.S. The attacks riveted world attention on Islam (albeit radical Islamism). Sales of the Qur'an and texts on Islam skyrocketed.

To truly understand Islam, one should begin with the Qur'an, the holy book of Islam. Although there are at least five distinct "responses to modernity" in the Muslim world today,<sup>2</sup> one starts with the Qur'an in the same way that reading the Bible is necessary to understand Christianity. The study of the Qur'an at the university level is a hot topic. One national academic and legal controversy in particular has raised a number of legal and pedagogical issues in academic settings. In summer 2002, the University of North Carolina (UNC) at Chapel Hill initially required incoming freshmen, as part of its Summer Reading Program, to read and discuss Michael Sells's *Approaching the Qur'an: The Early Revelations*.<sup>3</sup> This text, a fresh translation and elucidation of the early Makkan surahs of the Qur'an, was recommended by UNC Islamicist Carl Ernst to promote an understanding of Islam, especially in the wake of the events surrounding the 9/11 terrorist attacks.<sup>4</sup>

Alleging that UNC violated the Establishment Clause of the First Amendment and abridged students' rights to free exercise of religion

by obliging incoming freshmen and transfer students to study Islam against their will, a conservative-Christian activist group, the Family Policy Network (FPN), filed suit in the U.S. District Court, Middle District of North Carolina, on July 22, 2002, seeking a preliminary injunction to keep UNC from conducting its summer program. The case was captioned *Yacovelli v. Moeser* (after James Yacovelli, an FPN spokesman, and James Moeser, UNC Chancellor). When the FPN lost, it immediately appealed to the 4th Circuit Court of Appeals, but lost again. This case was widely reported,<sup>5</sup> nationally and internationally, but was not judicially “reported;” that is, the district and appellate decisions were not published.

As Sells commented: “Behind the lawsuit is an old missionary claim that Islam is a religion of violence in contrast to Christianity, a religion of peace. In effect, the plaintiffs are suing the Koran on behalf of the Bible.”<sup>6</sup> While America was involved abroad in Afghanistan and Iraq in the aftermath of 9/11, a clash of religions was occurring at home.

What the national press appears not to have covered yet is a later challenge filed in 2004, which also lost on appeal. The Court applied technicalities of the *Lemon* test along with the endorsement and coercion tests, and the challenge failed. In his decision, Chief Judge N. Carlton Tilley, Jr. ruled:

*Approaching the Qur'an* simply cannot be compared to religious practices that have been deemed violative of the *Establishment Clause*, such as posting the Ten Commandments, reading the Lord's Prayer, or reciting prayers in school. The book does include surahs, which are similar to Christian Psalms. However, by his own words, the author endeavors only to explain Islam and not to endorse it. Furthermore, listening to Islamic prayers in an effort to understand the artistic nature of the readings and its connection to a historical religious text does not have the primary effect of advancing religion.<sup>7</sup>

This ruling is consistent with the U.S. Supreme Court's endorsement of the academic study of religion in public schools and universities, when Justice Tom C. Clark in 1963 declared, “one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization.”<sup>8</sup> The

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secular approach makes the academic study of religion constitutionally permissible: “Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.”<sup>9</sup>

Of course, this is purely dicta, but dicta are often construed as holdings by those outside the legal profession. As Justice Powell has said more recently: “Courses in comparative religion of course are customary and constitutionally appropriate.”<sup>10</sup> Based on Justice Clark’s statement as it applies to the Qur’an specifically, university officials now argue that, in addition to being *constitutionally permissible*, one’s education is not *complete* without a study of the Qur’an (as well as the history of Islam) and its relationship to the advancement of civilization.<sup>11</sup>

Religion in general is a controversial topic within higher education, and demands inevitably arise to know why the Qur’an should (or even can) be taught in a state university. The situation in the U.S. has provoked legal discussions and challenges, chiefly: Does the study of the Qur’an in the University violate the Establishment Clause of the First Amendment by breaching the wall of separation of church and state? Academic experts in the study of religion think they know the answer, and for legal scholars the answer may be the same: Religion is a proper object of study, just like any other topic, but the explanations may and do differ.

To gain a proper perspective on the rationale behind teaching the Qur’an in the University, this article provides an introduction to the Qur’an, its world-historical significance, a brief history of its revelation, collection, and editing, and its salient themes. This is followed by a review of Michael Sells’s *Approaching the Qur’an*, then a detailed analysis of the cases brought against the University of North Carolina at Chapel Hill, with a conclusion after a brief look at some parallel cases.

### *Introducing the Qur’an*<sup>12</sup>

The Qur’an, the holy book of Islam, may well be the most powerful book in human history, with the arguable exception of the Bible. Both

in world history and contemporary affairs, it is doubtful that any other book now commands, or has in the past exerted, so profound an influence. Objectively, one of every five people on earth today is Muslim, and thus subjectively believes the Qur'an supersedes the Bible, and that the Qur'an is unsurpassed. Since Muslims see Islam as the last of the world's religions, they view the Qur'an as the latest and greatest book. Even if one does not share this view, the sheer magnitude of its influence commands respect, and one cannot be cross-culturally and globally literate without some understanding of this monumental text.

The Qur'an is nothing less than an attempt to reorder civilization: to rescue it, Muslims would say, from the appetites and turpitude that threaten the moral fiber of human society. Islam offers to fill a spiritual vacuum to which western society has largely turned a blind eye. Islamic spirituality can be harmonized with the best of western – Christian as well as contemporary secular – traditions of civic virtues, moral decency, and family values, informed by the West's traditional Judeo-Christian ethic. Just as the Ten Commandments are still relevant, the Qur'an still has much to say, although even some Muslims say it needs to be understood anew within the changed circumstances of modernity and post-modernity.

The real heart of the Qur'an is its message. One useful way of approaching the Qur'an is to see it as the vehicle for expressing profound truths regarding God and the universe, and humankind and its civilizations. God is the creator, and humankind the created (physically dependent) and the creative (morally independent). The themes of the Qur'an, therefore, are the organizing principles of Islamic religion and civilization. Whether the Qur'an is informed by previous sources is a vexing question. To suggest that the Qur'an somehow derives from predominantly Jewish or Christian sources is tantamount to discrediting the Qur'an as a document of revelation. For Muslims, the question should be the other way around. The Qur'an is the gold standard of divine truth. Since it is pure and unadulterated, previous scriptures should be measured against the Qur'an, not the other way around. Indeed, the Qur'an comprehends all previous scriptures.

Within itself, the Qur'an provides Muslims with a view of the Bible. Mention is made of the "scrolls" of Abraham and Moses, the

*Tawrah* (Torah) of Moses, the *Zabūr* (usually understood as the Psalms) of David, and the *Injīl* (Gospel) of Jesus, all conceived as direct revelation from God to the prophet concerned: “Surely we sent down the Torah wherein is guidance and light” (5:44); “And we sent, following in their footsteps, Jesus son of Mary, confirming the Torah before him; and we gave to him the Gospel, wherein is guidance and light” (5:46). In this way, these (and, by implication, all) previous scriptures are pictured within the revelatory and compositional image of the Qur’an itself.

The Qur’an, Muslims believe, is a revelation from God, pure and simple, communicated through a series of revelations imparted to the Prophet Muhammad over the course of twenty-three lunar years. Thus, it would be error and sacrilege to speak of Muhammad as the “author” of the Qur’an. Furthermore, to say that Muhammad was “influenced” by his religious world and that the Qur’an is a hodgepodge of intermixed influences is not only highly reductionist, but also suggests that the Prophet, not God, was himself the author of the Qur’an. The tension between traditional Muslim and western academic approaches is perhaps nowhere more intense than on this issue. Theologically, to concede that the Qur’an is a text revealed by God is to obligate a believer in God to abide by it.

Just as the Qur’an cannot be read from cover to cover in quite the same way that one reads a novel or a textbook, the Qur’an was not written from cover to cover. Just as writers have flashes of inspiration, Muhammad experienced flashes of revelation. These cumulatively became the Qur’an. Tradition is unanimous that Gabriel was the agent of revelation, even though he is mentioned only twice in the Qur’an and such a role is never explicitly given to him. The Qur’an itself explains how God reveals: “It belongs not to any mortal that God should speak to him, except by revelation, or from behind a veil, or that He should send a messenger and he reveal whatsoever He will, by His leave; surely He is All-high, All-wise” (42:51). In other words, while the Prophet revealed the Qur’an, God authored it, according to Muslim belief. *Wahy* is the technical term for revelation in the Qur’an. The fundamental sense of *wahy* seems to be what those steeped in the European romantic ethos would call a “flash of inspiration” that it is

sudden and unpremeditated, although Muhammad's revelations were sustained for over two decades.

The Qur'an itself claims that it is modeled on an archetypal *lawh mahfūz*, or "preserved tablet" (85:22), having been sent down to the nearest heaven on the "night of power" (surah 97) in the holy month of Ramadan, for Gabriel to transmit it to Muhammad. The text of the Qur'an is from God, Muslims believe, while the recording and editing of the Qur'an is by men. It is important to understand the implications of the Qur'an being originally revealed over a period of time, and thereafter collected and edited.

It was Muhammad's practice to meditate prayerfully in a cave on Mount Hira. He was practicing some sort of pious exercise (*tahannuth*) when he first encountered a mysterious entity later identified as the archangel Gabriel, who revealed the Qur'an to him over the next twenty-three years. The hadith literature provides many anecdotes as to how revelations would come upon Muhammad. The descriptions vary. Gabriel, the agent of revelation, taught Muhammad to recite the first passages of the Qur'an. Most frequently, the accounts speak of revelations "descending" upon Muhammad, such that he would hear the sound of buzzing, or of bells, or would feel a great weight come upon him, or would enter a trance, after which the words of the Qur'an would become indelibly inscribed in his heart, and subsequently dictated to scribes. The revelations of the Qur'an were first recorded by scribes who wrote down the verses on whatever writing materials were available: leaves and branches of palm trees, white stones, leather, shoulder blades of sheep, ribs. One early account states that a revelation was actually eaten by a domestic animal, because it had been recorded on something organic and edible.

After Muhammad's death in 632 CE, there was no authoritative record of the revelations. They had to be collected. The process of assembling, collating, and codifying the Qur'an was not informed by a great deal of available information as to dating and other historical information on which to base the traditional form the Qur'an eventually took. According to tradition, the decision to preserve the Qur'an was taken after hundreds of reciters were killed in Battle of Yamāmah (12/633). 'Umar (who was to become the second Caliph) suggested

to Abū Bakr that the Qur'an be collected and written down. Zayd ibn Thābit, one of Muhammad's secretaries, was commissioned to do so. He wrote it on sheets (*ṣuḥuf*), handed it to ʿUmar when completed, then passed it to the caliph's daughter. Finally, the text was fixed under ʿUthmān, in dialect of the Quraysh tribe (that of Muhammad), said to be the clearest of dialects, according to tradition. Where difficulties in establishing the text arose, the Quraysh dialect was given preference. Written texts required attestation from reciters, who had heard and memorized the Qur'an by heart. Thus, the canon of the Qur'an was fixed around twenty years after the Prophet's death, as well as the order of the surahs and the integrity of the consonantal text. The vocalization was not firmly established until around 300 years after Muhammad.

The urgency with which the text became fixed under the decree of Caliph ʿUthmān afforded precious little opportunity for a systematic, much less "scientific," ordering of the text. Its preservation was more important than its sequencing, and it was left to later Muslim scholars to provide a critical apparatus for more fully appreciating the pieces that made up the larger whole. How much editing and how intrusive or interpretive such editing may have been is largely a modern question that has occupied much of western scholarship on the Qur'an.

Soon after the Qur'an was revealed, it spread like wildfire, racing with the Arab conquerors during the first two centuries of Arab expansion. The rapidity and breadth of that expansion was dramatic. At this stage, the Qur'an had not yet achieved its status as a world text, for the simple reason that it was considered an "Arab" book (or, rather, "the" Arab book, since the Qur'an is the first book in Arabic). Non-Arab converts were at first obliged to attach themselves to various Arab tribes, in a kind of process of spiritual and social adoption.

Soon, non-Arabs, especially Persians, took umbrage with this. How could a scripture with a universal message, they argued, be restricted to just a single ethnicity? And, if not, on what grounds were Arabs justified in relegating to non-Arabs a secondary status, when the category of "Muslims" constitutes a spiritual and social "nation" that embraces all races and nations, yet transcends them? Was not the Prophet Abraham a Muslim ("one who surrenders" to the will of God)? And is not anyone who professes belief in the oneness of God

and in the authenticity of the Prophet Muhammad to be accounted as a believer, on equal footing with every other? And so it came to be: the appeal to the Qur'an's universalisms, expressive of its egalitarian ethic, prevailed. Thus Islam, although based on a message revealed in Arabic, was transposed to other cultures and climes, although it took centuries before the Qur'an itself was actually translated into other languages. This singular revelation became a universal scripture.

In its final form, the Qur'an consists of 114 surahs, customarily arranged by the longest surah first, except for the short "opening" surah. Generally, a traditional dating of these surahs has emerged, with the so-called "early Makkan surahs" spanning the first thirteen lunar years (with Early, Middle, and Final periods), shifting to the period of "Madinan surahs" in 622, coinciding with the first year of the hijrah or migration of the early Muslim community from Makkah to Madinah, followed by the "Later Makkan surahs" on the Prophet's triumphal return to his native city of Makkah shortly before the end of his life in 632.

Taking what has become Montgomery Watt's classic, two-part division of Muhammad's life, the early Makkan surahs exemplify Muhammad's role as "Prophet" while the Madinan and later Makkan surahs present Muhammad's vocation as "statesman." Thus, the earlier revelations are intended to strike the fear of God into the heart of the listener by the promise of heaven and the threat of hell. Accordingly, the Prophet's role is that of a "warner" who has come to make people alive to the threat of impending doom and death unless they repent and surrender to the will of God.

First warned, later guided is the basic purpose of the revelations and the logic of their sequence. The later Qur'anic revelations enshrine laws and principles for Muslims to follow. Once a Muslim community had formed (the migration of Muslims to Makkah in 622 effectively created the first Muslim state), laws were needed. Accordingly, Muhammad became a statesman in addition to his role as prophet, and began revealing the laws and ethical principles that later became the foundation for the Muslim schools of law and way of life.

As the recipient of revelation, the Prophet Muhammad was commissioned with a divine mission to present the Qur'an as the voice of



God, calling the entire world to righteousness and justice, to morality and decency, to a life of prayer and fasting, and to surrender to the will of God. That Muhammad was commissioned with a divine mission does not make Muhammad himself divine, as the Qur'an itself states: "He would never order you to take the angels and the Prophets as Lords" (3:80). This idea may be seen in an early Christian text: "Neither is there salvation in believing in teachers and calling them lords" (Homilies 8:5).

This concept of the Qur'an as a revealed scripture is basic to an appreciation of why Muslims both revere the Qur'an and orient their entire lives according to its dictates, for the Qur'an and the hadith (oral traditions that report the sayings and actions of the Prophet Muhammad) are the two principal sources of authority for Muslim doctrine and praxis. A deeper walk with God on the "straight path" of Islam can come about through spiritual growth and transformation. How does one do this? What can serve as an infallible spiritual guide?

For Muslims, the way to bring one's life into greater conformity with God's will is to follow the laws of the Qur'an and the example of Muhammad. The truest sign of one's transformative faith is conformity and dedication to the principles and teachings of Islam that are preserved, first and foremost, in the Qur'an itself. The single most important act of piety is to surrender one's own will to that of the will of God. The word "Muslim" means "one who has submitted" or committed themselves to the civilizing will of God. "Surrender" is not the best translation, because following God's will is an act of free will, a vigilant choice, and a matter of strength through commitment and practice.

Salvation then, for Muslims, consists of much more than simply being forgiven for one's past sins and transgressions. The act of repentance itself affects much of this, and the true test of one's sincerity is a matter of public record in terms of one's actions. However, Islam sees a spiritual life beyond forgiveness. Salvation is not a change of status that magically and suddenly averts God's wrath. Salvation is a process, a refinement of one's character over time.

A nineteenth-century mystic once said that the Qur'an eclipses all of the miracles of all of the previous prophets, for the miracle of the

Qur'an, alone, remains.<sup>13</sup> That is to say the staff of Moses may have turned into a serpent and swallowed up the magicians' snakes in Pharaoh's court, but that prophetic sceptre has vanished. Moses may well have parted the Red Sea, as Muslims themselves believe, but that prodigy is long gone. No empirical evidence of either miracle remains today. What alone abides is the "miracle" of the Qur'an – its prodigious ability to transform the lives of those who believe and accept the Qur'an as the best guide for their lives. This transformation is spiritual alchemy, taking the base appetites that most of us are born with and transmuting these into the pure gold of a refined moral and spiritual character. The Qur'an can transform a pair of horns into a set of wings, changing the pious believer from a devil into an angel. Such is the nature of Muslim belief about the Qur'an.

### *Approaching the Qur'an*

Reading the Qur'an is far easier said than done. The Qur'an is a challenging text. To the uninitiated, the Book is both simplistic and enigmatic. To the untrained eye, the Qur'an, on first impression, may strike one as arcane, florid, repetitive, or otherwise impenetrable to westerners wholly unprepared to study the text dispassionately. However, there is a deeper hermeneutical issue involved, one of attitude and assumptions as to the authority and nature of the text. The Qur'an may be a difficult text for non-Muslims, but it is not unfathomable. Sells's *Approaching the Qur'an* has probably done more to render the Qur'an accessible to a western audience than any other book in the past few years.

The Qur'an makes its own particular truth-claims, which are quite audacious. It tells the reader that its source is an archetypal "mother of the book" (*umm al-kitāb*) in heaven. The Qur'an is therefore of divine origin. It is not only authorized but is actually authored by God Himself. This is an extraordinary claim, indeed. As such, from a Muslim perspective, the element of divine revelation is of paramount importance. God wrote the Qur'an, Muslims believe, and thus the book commands their respect. Yet should it command the respect of those who have not been raised in its culture, who might consider it in

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the university? Absolutely. So where does one begin? There are methodological considerations that must first be addressed.

The predominantly Christian West may have serious misgivings regarding the truth of such claims. They may view the Qur'an as an ersatz version of the Bible, as a derivative imitation. This very assumption largely biased the western reception of the Qur'an from the very start, and affected and infected its study until now. As a result, polarities in the study of the Qur'an have emerged, although these are beginning to disappear. The great divide in Qur'anic studies has historically been the tension between traditional Muslim approaches and western academic approaches.

Although problematic for gaining a coherent understanding and appreciation of the Qur'an, these two competing paradigms are somewhat synergistic. If you combine the two, you get what Wilfred Cantwell Smith regarded as the insider-outsider dynamic. In principle, he suggested that the best approach to the study of the Qur'an and Islam is to be able to enter into a believer's (emic) perspective while maintaining some degree of relative objectivity (etic perspective). Indeed, Smith's canon of believer intelligibility requires that "no statement about a religion is valid unless it can be acknowledged by that religion's believers" (although in later writings he reversed this somewhat). This "creative principle" offers the best of both worlds, for it "provides experimental control that can lead" scholars "dynamically towards the truth." However, unless one adheres to Smith's principle, polarities will inevitably arise. The following table highlights the nature of these polarities.

### *Polarities in the Study of the Qur'an*

#### **Western**

Secular academic  
Analytic  
Tendency to over-differentiate  
Use of reason and bias  
Sometimes offensive

#### **Muslim**

Traditional academic  
Synthetic  
Tendency to harmonize  
Use of reason and faith  
Sometimes defensive

Here we see a complement of productive and reductive approaches. The method of reading largely determines what is read and how it is understood. The Muslim approaches the Qur'an reverentially and with full faith in the truth it enshrines. The western secular approach can be just the opposite: it is skeptical and analytic, yet it does not have to be. Where there are apparent difficulties and even apparent contradictions in the text, the Muslim will try to resolve those anomalies by harmonizing them on a higher plane of understanding, while a person approaching the text from a secular perspective (the westerner) may be dismissive of the Qur'an as simply a human enterprise where inconsistencies and errors are to be expected. Such a conclusion is not only misguided, according to any knowledgeable Muslim, it is also an attack upon the integrity of a sacred text that is divinely revealed.

Returning to *Approaching the Qur'an* itself, Professor Sells makes his objective clear: "The purpose of this book is neither to refute nor to promote the Qur'anic message. Rather, the goal is to allow those who do not have access to the Qur'an in its recited, Arabic form to encounter one of the most influential texts in human history in a manner that is acceptable."<sup>14</sup>

Critics see the book as presenting a glorified image of the Qur'an, and thus of Islam itself, through a process of favorable selectivity. This, they claim, is tendentious. Instead of an Orientalist bias against Islam, which permeates so much of western scholarship over the past century, the opposite holds true here. By conveniently removing the more sensitive Qur'anic passages – those that would surely offend and alarm a typical western, non-Muslim reader – Michael Sells has misrepresented Islam, critics say, not by focusing on its more controversial elements, but by meretriciously suppressing them. This is tantamount to a kind of "spin" – a public relations ploy that critics allege neatly packages Islam as something it is not. By giving a partial view of the Qur'an, the positive verses effectively hide the negative. This may be thought of as a kind of reverse stereotyping that idealizes, whitewashes, and romanticizes the Qur'an. This "spin doctoring" is problematic, yet is the author's prerogative. Apologetic literature does this characteristically by lionizing the "true" religion and demonizing the "false" religion. Such criticisms as these tend not to come from Professor Sells's peers, but rather from Christian conservatives and evangelicals.

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While any scholar or other author is perfectly at liberty to do this, a public university becomes complicit in the process once such a book itself is adopted as part of a curriculum. That means state action, and that action, critics charge, is tantamount to establishment of religion. The UNC Qur'an controversy raises precisely this kind of allegation. While Michael Sells, a respected Islamicist (a scholar of Islam, although presumably not a Muslim himself), has affirmatively disavowed and repudiated all such charges, when the debate moved into the legal arena, it was for the courts to decide.

### *Facts and Case Analysis*

In 2002 and again in 2004, the University of North Carolina at Chapel Hill was sued over its 2002 freshman orientation program. This program had been initiated relatively recently, two years before 9/11. In 1999, UNC established its "Carolina Summer Reading Program" as part of its "First Year Initiative." This orientation program for incoming freshmen had been recommended by the "Report of the Chancellor's Task Force on Intellectual Climate" in August 1997. The goal of this three-year pilot project was to provide "an intellectual uplift of the freshman orientation experience" so that Carolina students would "value an active intellectual life."<sup>15</sup>

Prior to the fall orientation experience, incoming students were required to participate in a summer reading program. This special summer reading assignment happens annually. Each year, a book is chosen according to an adopted theme. 9/11 prompted the theme for 2002 – unquestionably topical and highly relevant subject matter. However, *Approaching the Qur'an* drew widespread criticism from the religious right as intellectual propaganda by presenting a beautified picture of Islam that was fundamentally skewed and that failed to really explain to students the background and genesis of Muslim extremism, as represented by Osama bin Laden and his ilk. While the latter criticism is well-founded, it is misplaced, precisely because explaining the roots of 9/11 was simply not a stated objective of the reading program. The subject falls quite outside the purview of the book itself, which was published before the national tragedy of 9/11.

The terrorist events of 9/11 sparked a huge public interest to know more about Islam. Chain bookstores across the nation responded to and profited from that interest. The sudden attacks immediately riveted national attention on the security threat, and executing appropriate (or inappropriate) responses to that threat has dominated U.S. foreign policy from then (beginning with the “regime change” in Afghanistan, when American forces ousted the ruling Taliban) until now. Thus, it was not surprising that UNC adopted a book about Islam to help incoming students familiarize themselves with the religious underpinnings of Islamic radicalism, although somewhat remotely. Of course, the choice of Michael Sells’s *Approaching the Qur’an*, while providing an introduction to the core religious text of Islam, did little to illuminate current events.

Having taught Islam at the university level over the years has given me some firsthand experience in approaching Islam. In one course, I adopted Michael Sells’s *Approaching the Qur’an* to help explain Islamic origins rather than present-day Islam. While modern Islam may be explained by showing how various Muslims today may interpret the Qur’an, a reading of the Qur’an itself will simply and utterly fail to accomplish such a task. In approaching modern Islam, I have found it useful to present students with a typology that accounts for the wide-ranging, often disparate and even conflicting attitudes towards the West that find ideological and political expression throughout the Muslim world today.

Thus, I have taught students (including my Muslim students) to clearly differentiate among seven Islamic “responses to modernity.” From “right to left,” so to speak, they are: 1. radical Islamism; 2. traditionalism; 3. neo-traditionalism; 4. modernism; 5. secularism; 6. postmodernism; and 7. post-Islamism. Michael Sells’s *Approaching the Qur’an*, and even a complete study of the Qur’an in its entirety, would not prepare students to understand radical Islamism in its present-day manifestations. For this, a history of various works of *tafsīr* (Qur’an commentary) would provide some necessary connections, purely as a point of departure. The overall context would then have to be supplemented by a history of the modern Muslim Middle East, beginning from the intrusion and subsequent hegemony of European

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colonialism (from Napoleon's invasion of Egypt in 1798 onward) and its reconstructive yet destabilizing aftermath.

Much writing of the history of the modern Muslim Middle East has been tainted by what has come to be known as Orientalism, a term that is brilliantly illuminated by the work of Professor Edward Said. Then, there is the ubiquitous presence of globalism, in all of its economic, cultural, and ideological intersections with traditional and developing societies, that must be considered as tinting the spectacles of western scrutiny of all things "Oriental" in general, and Muslim in particular. Thus, in light of western caricatures of the so-called "Green Threat" (green being a sacred color in Islam), an enlightened position would take pedagogical note of the tendency towards cultural bias in representations of Islam in both the media and in university curricula.

Therefore, UNC's adoption of a text that is quite sensitive to (and sympathetic with) Islam provides students with a necessary counter-balance to the infrared vision with which the West has tended to view Islam: conveniently forgetful of the fact that Islamic civilization stands as a largely unacknowledged root of pre- and post-Enlightenment western civilization, especially when Islam was the world's superpower for around 800 years. Carl W. Ernst, UNC's resident Islamicist, made the following statement on August 28, 2002 as to UNC's selection of *Approaching the Qur'an* as required reading for incoming Carolina freshmen: "The Koran assignment at the University of North Carolina, where I am a professor of religious studies, is a belated attempt to catch up with the one-way flow of globalizing culture."<sup>16</sup> Yet this "one-way flow" precipitated a two-way collision on campus and in court. The actual reading assignment is still on UNC's "Carolina Summer Reading Program" official site:

The Carolina Summer Reading Program is designed to introduce you to the intellectual life of Carolina. Required of all new undergraduate students (first year and transfer), it involves reading an assigned book over the summer, writing a one-page response to a particular subject, participating in a two-hour discussion, and sharing your written response with others. The goals of the program are to stimulate discussion and critical thinking around a current topic, to introduce you to academic life at Carolina, to

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enhance a sense of community between students, faculty and staff, and to provide a common experience for incoming students. Some find they enjoy sharing the reading with members of their family during the summer.

This year's reading is *Approaching the Qur'an: The Early Revelations*, translated and introduced by Michael Sells. Although the summer reading is required, if any students or their families are opposed to reading parts of the Qur'an because to do so is offensive to their own faith, they may choose not to read the book. These students should instead complete their one-page response on why they chose not to read the book.

...all students are expected to...bring their one-page response to their small group discussions led by selected faculty and staff. This is an opportunity for you to connect with members of Carolina's learning community and to share a common academic experience with your new peers.<sup>17</sup>

Note that provision was made for students who took umbrage at the reading to opt out of it and to simply explain the rationale behind their decision in a short essay. Originally, UNC required all its students to do the reading, without exception. However, when exception was taken (by critics), UNC backtracked to make an exception. Disaffected students could opt to write an essay as to why they elected not to read *Approaching the Qur'an*. The actual number of students who exercised this option is not available, and so assessing the level of controversy that the summer reading program had generated in the student population is quite impossible to tell.

While the internal situation was relatively protected from the glare of public scrutiny, the controversy did make the national press.<sup>18</sup> It hit a raw nerve and tapped into public interest in Islam – a piqued desire to learn more about Islam that predated the UNC controversy itself. One instance of the highly visible (and audible) press coverage was a segment of National Public Radio's *Talk of the Nation*, "Studying Islam," broadcast on August 15, 2002,<sup>19</sup> the day of the first court challenge and ensuing decision when a court injunction was sought to suspend the UNC program (see below).

Guests included eminent Islamicist John Esposito, Professor of Religion and International Affairs, Georgetown University, and



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author of *Unholy War: Terror in the Name of Islam*,<sup>20</sup> and Michael Sells, Professor of Comparative Religion, Haverford College (Haverford, PA), and author of *Approaching the Qur'an: The Early Revelations*.<sup>21</sup> Also interviewed was former Sunni Muslim, Emir Caner (whose surname is misspelled as “Canner” on the NPR web site), Assistant Professor of Church History, Southeastern Baptist Theological Seminary, (Wake Forest, N.C., where he is now Associate Dean<sup>22</sup>), and co-author of *Unveiling Islam*.<sup>23</sup> At that time, Caner was erstwhile advisor to the Family Policy Network, the conservative Christian advocacy group that brought suit against UNC. Caner complained that “reading a portion of the Qur’an” that selectively beautifies the more universal features of Qur’anic discourse and expurgates by omission some of the more controversial passages effectively “becomes a propaganda tool.” While not aimed at actually converted students to Islam, the nature of the propaganda tool presents Islam as an inherently peaceful religion. For this and other reasons, Professor Caner objected to the fact that some 4,200 incoming freshmen would be “forced” to read a text that promotes a positive view of the Qur’an that distorts the real picture by presenting the early Makkan surahs (the first revelations of the Qur’an, which, as a whole, were revealed to the Prophet Muhammad over a period of twenty-three lunar years). The required reading did little to shed light on an event that shed such blood and tears as 9/11.

When host Neal Conan asked Professor Sells for his views as author of the controverted text, Sells disclaimed his book of having any propagandistic purpose whatsoever. *Approaching the Qur'an* is purely an introductory text on the Qur’an and offers insights as to how the text is read and appreciated by Muslims. It simply does not deal with why Islamic extremists commit terrorism in the name of Islam (and based on an extremist reading of key passages of the Qur’an that are not part of the early Makkan surahs and are therefore not found in the text of *Approaching the Qur'an*). Sells disavowed such an ulterior motive or agenda for the book, and advocated what he called a “non-conflictual view of religion” that allows for a dispassionate inquiry into religions. In Sells’s defense, Professor John Esposito, the other Islamicist guest on NPR, pointed out that Sells’s book was written before 9/11 and

therefore could not be expected to address its implications for a nuanced understanding of the mentality that animated the terrorists themselves.

Altogether, four actions were brought against UNC that dealt directly with the Qur'an controversy: two lawsuits in 2002 and two more in 2004. (There was an additional suit over UNC's Islamic awareness week, mentioned below.) Ironically, the 2002 suits attracted widespread publicity, both nationally and internationally, while the 2004 actions registered scarcely any notice in the press. The UNC itself became the target of criticism and court action in 2002, but was off the media's radar screen in 2004. The first round of challenges proved newsworthy, while the latter was not. This resulted in an inverse pattern of publication: while the 2002 suits were widely reported by the press, they were judicially unreported, which is to say that the court decisions themselves remain unpublished.

Quite the reverse occurred with respect to the 2004 cases. Although the press virtually ignored the story, the two 2004 cases were judicially reported, widely available, and readily accessible to law students and legal professionals through both the Lexis-Nexis and Westlaw proprietary databases. This situation is easy enough to explain in terms of proximity and distance from the 9/11 terrorist attacks. The national press reported the 2002 court cases when they were still within in the psychosocial wake of 9/11, whereas the 2004 cases were considerably removed from the immediate aftermath of 9/11. Yet they were judicially reported (and published), whereas the 2002 cases were not. By means of the reportage available, the 2002 court battles may be reconstructed as follows.

*Yacovelli v. Moeser (University of North Carolina, Chapel Hill), Case No. 02-CV-596 (U.S. Dist. Ct., Middle District of N.C., Aug. 15, 2002) (Unreported)*

On Thursday, August 15, 2002, two taxpayer members of the Family Policy Network (a conservative Christian advocacy group), James Yacovelli (North Carolina State Director of FPN) and fellow activist Terry Moffitt (FPN Chairman of the Board and UNC-CH alumnus), along with three anonymous UNC students, sought a court-ordered

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emergency injunction in an attempt to stop some 180 Qur'an discussion groups from meeting on Monday, August 20 to discuss their reading of Michael Sells's *Approaching the Qur'an*. Although this initial action was widely reported by the national and internal press, the case was judicially unreported (unpublished), and its details would perforce have to be gleaned from media accounts of it. However, the present writer has now obtained a transcript of this proceeding.<sup>24</sup>

The case was heard by the Hon. N. Carlton Tilley, Jr., Chief District Judge, U.S. District Court, Middle District of North Carolina, in Greensboro. Two of the three student plaintiffs were aged 18, and the third was a 17-year-old minor, represented by the parents. The first student, bearing the pseudonym John Doe No. 1, was an evangelical Christian. John Doe No. 2 (the minor, represented by "John and Jane Doe, Sr.") was a Roman Catholic, and Jane Doe was Jewish. The action was originally filed on July 22 in the Federal District Court.<sup>25</sup> The plaintiffs were represented by Stephen M. Crampton and Michael J. DePrimo of the American Family Association/Center for Law and Policy. The two attorneys have publicly stated their personal convictions ("What We Believe") as it relates to the law:

The principles that inform the Center for Law and Policy's jurisprudence and policy positions derive from the Bible, for as Sir William Blackstone wrote over two centuries ago, the law of the Creator is "the true law." Blackstone's understanding of "true law" has resonated throughout the corridors of history from voices as diverse as Moses, Plato, Cicero, Jefferson, and countless other theologians, philosophers, jurists, and statesmen. Liberty stems only from the true law and the principles drawn therefrom. It is these principles, embodied in the Declaration of Independence, upon which the Center for Law & Policy premises its actions.<sup>26</sup>

Presumably, in a further effort not to reveal their identities, none of these students were present in Tilley's Greensboro court. Over UNC's objections to the contrary, Judge Tilley allowed the three students to remain unknown due to their age, even though there was no indication that these students stood in any danger or faced any reprisal for their legal actions. "I think it could be disruptive to the education and

the mental health of those three students to be identified,” Tilley stated.<sup>27</sup>

UNC Chapel Hill was represented by Assistant Attorney General Celia Grasty Lata and Joyce S. Rutledge, and Susan H. Ehringhaus and David Parker, General Counsel, University of North Carolina. Counsels for the Defendant argued that the case was not about religious freedom, but censorship of ideas. Lata argued that to halt the reading program would have a chilling effect on freedom of speech in the University, causing professors to be wary of choosing other books that might spark controversy. “It might have done that already,” Tilley remarked in court.<sup>28</sup>

As plaintiffs’ advocate, Stephen M. Crampton, chief counsel for the Mississippi-based American Family Association Center for Law and Policy, played the Muslim call to prayer, in Arabic, from the audio CD that accompanies *Approaching the Qur’an*. “We would like to ask how this stimulates critical thinking?” Crampton asked, as the recording played in the background. “I would submit that’s a quintessential religious exercise.” Judge Tilley later responded to this contention in his holding: “The two-hour discussion session is not a religious activity, just as playing the CD in this courtroom did not convert it into a religious activity.”<sup>29</sup>

Playing a CD in Arabic has educational value in creating an impression as to what the Qur’an actually sounds like when recited. Whether the playing of the CD also has a religious effect “certainly goes to the question of how academically that might be considered and discussed instead of promoting or endorsing Islam or a possible view of Islam, whether it is palliated or not.”<sup>30</sup> Recital of the Qur’an is a religious activity, but listening to a recitation is not, unless one happens to be a Muslim, understands Arabic, and is a participant in the liturgical experience. As Tilley further observed: “Presumably, very few people entering Chapel Hill would speak Arabic and be able to understand the words.”<sup>31</sup> The role of the listener is thus that of an interested observer. It is the “music appreciation” akin to listening to a Gregorian chant.

After hearing the merits of the controversy, Judge Tilley held that there was simply no evidence that the University chose *Approaching the Qur’an* in an effort to convert students to Islam: “I do not believe an

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objective person reading the book would believe the University is suggesting a preference for Islam, a particular interpretation of Islam or religion itself.”<sup>32</sup> In reading the book for himself, Judge Tilley remarked:

Now, with regard to the book, Mr. Crampton read certain small portions of the book which he contends support his position that the book does not fairly teach the Qur’an and, therefore, would instill in persons who are participating in the program an unduly positive view of the Qur’an. My own review of the book was not to that effect. My own review was that the book did present Dr. Sells’ opinion that he was not endorsing as truth any of the revelations. He does point out in there that Muhammad claimed he had those revelations. Dr. Sells is not saying he did have those revelations.<sup>33</sup>

Judge Tilley then reviewed *Approaching the Qur’an* in general terms, highlighting specific passages he found particularly relevant.<sup>34</sup> His overall conclusion was that the book was strictly academic, not religious in nature, and therefore did not amount to a religious activity. He ended his analysis with an application of the *Lemon* test – a test for Establishment Clause violations deriving from *Lemon v. Kurtzman*, 403 U.S. 602.<sup>35</sup> In closing, Judge Tilley complimented attorneys on both sides, in saying:

I think the case has been very well-handled by all the lawyers. You’ve done an excellent job on your briefs. You’ve done an excellent job on your arguments, and if every case that came into court were as well-represented as the persons in this particular case had been, I think the state of our jurisprudence would be elevated several levels.<sup>36</sup>

As expected, the plaintiffs appealed, still seeking an injunction, primarily on anti-establishment grounds, for a halt to the Qur’an discussion sessions scheduled for August 20.

*Yacovelli v. Moeser, Aff'd, Case No. 02-1889*  
(4th Cir., Aug. 19, 2002)

As expected, the plaintiffs appealed, still seeking an injunction for a halt to the Qur'an discussion sessions. The appeal was filed on August 16 in the 4th U.S. Circuit Court of Appeals in Richmond. In the meantime, the UNC Qur'an controversy was debated in the halls of the Virginia state legislature. On August 7, the House Appropriations Committee voted to bar public funds for use in UNC's 2002 summer reading program, in what amounted to a legislative reaction to the University's selection of *Approaching the Qur'an*.<sup>37</sup> In the Associated Press report, "The committee voted 64-10 to bar UNC-Chapel Hill from using public funds for its plan to teach new students about a book on the Qur'an unless it gives equal time to 'all known religions.'"<sup>38</sup> No committee imaginable would have the proportions indicated by this vote! The vote was surely a House of Representatives vote, based on its committee's recommendation that it was the North Carolina General Assembly and that the bill passed by a vote of 64-12.<sup>39</sup> But this information has to be wrong. UNC-CH Chancellor James Moeser himself (one of the two named defendants in *Yacovelli v. Moeser*), commented on this proposed legislation in a speech:

The House of Representatives of the North Carolina General Assembly attached a proviso to the budget to disallow the use of state funds for any program or course that deals with a single religion unless all known religions are given equal treatment. (This proviso, which also would affect many offerings in the Department of Religious Studies, was quietly removed when the state budget finally [passed] in mid-September.)

And in response to this clear threat to academic freedom, the Board of Governors of the 16-campus University of North Carolina system failed in an initial vote to endorse a resolution in support of academic freedom. (Later, after our program was over, the Board of Governors approved a resolution reaffirming academic freedom.)

Finally, on August 19, after the Family Policy Network's legal efforts to shut us down had failed, we went on with our discussion groups. Nothing terrible happened; our students read a book, talked about it and learned.

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But the combination of the lawsuit, the legislative threat and the governing board debate – all occurring within a short period of time – made this a very hot story.<sup>40</sup>

Thus the legislation failed, but its passage by the North Carolina House of Representatives rightly alarmed academics by directly threatening their academic freedom. While this equal time requirement raises some interesting curricular issues, the House Appropriations Committee was clearly more interested in barring Islamic awareness than in promoting awareness of all world religions. If this is a fair and accurate reading of the committee's proposal and the House's overwhelming vote in support of it, then the real legislative intent did not really match the stated curricular condition precedent. Legislators were simply responding to a number of complaints from their constituents. Because it was such a threat, the vote immediately drew criticism from the university community. Joseph Farrell, UNC Professor of Public Law and Policy, characterized the House vote as "nothing more than political theater."<sup>41</sup> Even had the bill passed North Carolina General Assembly, the measure would still have required the governor's signature before it became law, and even then would probably have not withstood constitutional scrutiny once challenged in court.

One academic's protest over the House's vote deserves to be cited at some length, because it so eloquently represents the views of the vast majority of academics. In 2002, Dr. Richard Veit, Professor of English at the University of North Carolina at Wilmington since 1977, was chair of the elected Faculty Assembly, representing the faculty of the sixteen University of North Carolina campuses. In his "Statement to the Educational Planning, Policies and Programs Committee of the Board of Governors" on August 22, 2002, Professor Veit took a stand for academic freedom against the House's threatened budgetary sanctions for promoting the study of Islam by means of the Qur'an. Speaking on behalf of some 13,000 UNC professors, Dr. Veit stated:

Inseparable from the search for truth is the search for understanding. It is the obligation of scholars, faculty, and students to examine the world as it

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is, in all its aspects. In a diverse, complex, dangerous, and increasingly interconnected world, we must gain the fullest possible understanding of others and of ourselves.

As faculty we have the obligation to teach students, not to indoctrinate them, not to provide them with a store of facts, but to expose students to diverse thought, to teach them to analyze, compare, and evaluate ideas. In short, we must train students to think for themselves.

It was in the spirit of open inquiry and the quest for understanding that the faculty at Chapel Hill assigned the reading and discussion of a scholarly book, *Approaching the Qur'an: The Early Revelations*. If legislators impose what would be, in effect, a ban on the study of a particular book, they would limit academic freedom in a way no different or less destructive than the shackles placed on academic inquiry by the Taliban in pre-9/11 Afghanistan.

Academic freedom entails that academic and curricular decisions in a university must be made, through orderly academic processes, by the faculty. When the faculty's considered professional judgments are limited or overturned by others, academic freedom ceases to exist and the university ceases to function as a university.

Academic freedom is a powerful idea, but it is constantly under attack, and it exists only when it is vigilantly and vigorously defended. As faculty we urge the North Carolina General Assembly to reject the proposal in the House budget that would curtail academic inquiry.<sup>42</sup>

The appeal itself was timely, but not persuasive. Speaking from the Louis F. Powell, Jr. U.S. Courthouse in Richmond, Virginia, the Court handed down a unanimous decision, rendered by Judge Robert B. King, and joined by Judges Roger L. Gregory and William B. Traxler Jr., in which the three-judge panel upheld the federal district court's decision by ruling that "the appellants have failed to satisfy the requirements for such relief."<sup>43</sup> According to the Associated Press, "No further explanation was contained in the brief ruling."<sup>44</sup> A copy of the actual order bears this out.<sup>45</sup> The FPN's effort to get an injunction having failed, UNC's Qur'an discussion groups proceeded as planned the very next day.

The story was far from over - the Family Policy Network did not give up. Another event provided the pretext for a new action: an Islamic awareness week. In early October 2002, the American Family



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Association's Center for Law and Policy, which had represented the FPN in its previous actions, amended its federal court complaint in an effort to block UNC from hosting the round-table discussions and seminars on Islam, scheduled for November 11-15. According to Michael DePrimo, an attorney for the Center for Law and Policy: "There's a lot more going on than we thought there was when we first filed our complaint."<sup>46</sup> The amended complaint was filed on Oct. 4, giving UNC 20 days to respond. "The issue" DePrimo stated, "is whether or not the University is advancing the religion of Islam." To which he hastened to add: "And clearly they are." The issue would again be decided in the Federal District Court in Greensboro.<sup>47</sup> Reports of the outcome of this action, as of this date, are unavailable. However, the FPN continued to mount challenges to UNC policies promoting Islamic awareness. The eventual federal responses, published in 2004, would prove to be as articulate as they were definitive.

*Yacovelli v. Moeser*, 2004 U.S. Dist. LEXIS 9152

(M.D.N.C. May 20, 2004)

There were seven "players" in this lawsuit. Alleging that UNC's orientation program violated both the Establishment Clause and the Free Exercise Clause, this action was brought by three anonymous students (named by the pseudonyms of "John Doe No. 1" and "John No. 2," along with a seventeen-year-old minor represented "by and through his parents, John and Jane Doe, Sr."), together with two taxpayers, James Yacovelli and Terry Moffitt, against the University of North Carolina at Chapel Hill, represented by two leading UNC officials, these being captioned as "James Moeser, individually and in his official capacity as Chancellor of the University of North Carolina at Chapel Hill, and Cynthia Wolf Johnson, in her official capacity as Associate Vice Chancellor for Student Learning for the University of North Carolina at Chapel Hill." The Plaintiffs alleged, in part, the following:

...*Approaching the Qur'an* presents a biased view of Islam as a peaceful religion and that it leaves out less flattering stories about Muhammad. Plaintiffs conclude that this positive portrayal of both Muhammad and Islam constitutes an endorsement of Islam. Furthermore, Plaintiffs

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contend that the inclusion of surahs and a compact disk (“CD”) containing a reading of these surahs in Arabic is impermissible. While Sells explains that listening to a reading of the text in Arabic creates a different experience than simply reading a translation, Plaintiffs argue that listening to the CD exposes students to “the spell cast by a holy man of Islam.”<sup>48</sup>

The last sentence is surprising and might have added a refreshing touch of levity, were it not for the fact that the Plaintiffs were quite serious in this allegation. The notion that a recital of the Qur’an is an act of sympathetic magic probably derives from a demonic view of Islam from within a conservative Christian perspective. Both religions, in a sense, not only require a belief in a Supreme Being and in prophetic figures (Jesus and Muhammad in Christianity and Islam, respectively, although the Qur’an recognizes the divine mission of Jesus as well) who are commissioned by that Being to convey a message of salvation to the world, but entail a belief in Satan (Islam: Iblīs) as well. More liberal interpretations of each religion have tended to treat Satan as the personification of human evil, a development that can be seen in the youngest independent world religion, known in the West as the Bahai Faith, which has disenchanting the universe of demonic principalities altogether and shifted the burden of responsibility for evil back onto the shoulders of its effective agents, human beings.

Since, from an evangelical Christian perspective, Satan may assume angelic qualities in order to trick the spiritually susceptible into believing a false religion, it makes perfect sense that a recital of the Qur’an would be construed as a satanic impulse with the power to cast a spell over the audience. This particular allegation should have been edited out, because it betrays the clearly religious bias that informs the complaint itself. This is not the ACLU lodging a protest here. Had UNC required the Gospel of Luke for its summer reading program, it is highly unlikely that the Family Policy Network and the three anonymous student plaintiffs would have found a cause of action. Quite the contrary, they might well have endorsed it. If so, this would point to an obvious contradiction at the level of principle.

The reader may well wonder why, some two years later, the plaintiffs persisted in their cause of action against UNC. The Court notes

their rationale: “Although the program has now been completed, Plaintiffs urge this Court to enjoin UNC from organizing such a program in the future. Plaintiffs also seek nominal damages and attorneys’ fees.”<sup>49</sup> This case was pursued on juridical (and religious) principle and for its largely symbolic value. For “their alleged lack of standing to challenge the reading assignment,” the Court granted UNC’s motion to dismiss the Taxpayer Plaintiffs, James Yacovelli and Terry Moffitt.<sup>50</sup> Although there is no requirement of economic injury, the Yacovelli and Moffitt failed to show a constitutionally mandated “case or controversy.” Their “intangible injury” simply did not rise to the threshold of a legally cognizable harm for which relief (here, injunctive relief) might be sought.

Although absent from their amended complaint, the Court still addressed the Taxpayer Plaintiffs’ contention that “UNC’s display of the assignment and study questions on the University’s website is, in effect, an offensive state sponsored religious display.”<sup>51</sup> Plaintiffs’ procedural error notwithstanding, the Court explained that mere observation of religiously offensive conduct did not constitute a real injury for purposes of standing. Furthermore, UNC’s website, while state-sponsored, was hardly religious and therefore “could not properly be deemed a religious display.”<sup>52</sup> The Court observed that UNC’s website simply “provided a brief synopsis of *Approaching the Qur’an* without including any portions of either the book or the Qur’an” and that, at most, the site gave straightforward information “about an orientation session that may or may not be constitutional.”<sup>53</sup> The Taxpayer Plaintiffs’ complaint failed because they could not “present a direct injury sufficient to confer standing.”<sup>54</sup> Beyond their argument that they had suffered a direct injury, the Court also rejected their allegation of having been “injured as taxpayers.”<sup>55</sup>

*Flast v. Cohen*<sup>56</sup> carves out an exception to the general rule that taxpayers have standing purely by virtue of their taxpayer status. The Court recited the rule that “[p]laintiffs asserting taxpayer status must allege more than a violation of the Establishment Clause. They must contend that, by use of the taxing and spending power, the government has exceeded its constitutional authority under the Establishment Clause.”<sup>57</sup> In the instant case, the Court found that

plaintiffs' complaint over UNC's expenditure of operating funds in support of its orientation program did not amount to a challenge of "congressional or state legislative exercise of the power to tax and spend" nor "any specific appropriations measure."<sup>58</sup> The Court clearly distinguished the UNC fact scenario from situations adumbrated by *Flast* that involve permissible "challenges to legislation governing the appropriation of tax moneys."<sup>59</sup> Having shown no personal injury, and having failed to demonstrate a relevant challenge to state spending under *Flast*, the Court dismissed James Yacovelli's and Terry Moffitt's taxpayer claims.<sup>60</sup>

Yet the Court preserved the complaint of the three UNC students, who did have standing. First, the Court "granted the 'rare dispensation' of proceeding anonymously,"<sup>61</sup> balancing the public's right of access to open court proceedings versus citizens' right to privacy. The Court enumerated the five factors outlined in *James*<sup>62</sup> that courts must weight in deciding whether to conceal the true identities of plaintiffs: 1. to protect a "specific sensitive and personal privacy interest;"<sup>63</sup> 2. to seriously contemplate any "threatened consequences of the identification of plaintiffs;"<sup>64</sup> 3. to give due regard to the "ages of the plaintiffs" who seek to safeguard their privacy interests;<sup>65</sup> 4. to explore "whether the plaintiff is pursuing legal action against a governmental or private party;"<sup>66</sup> 5. to weigh any "risk of unfairness and prejudice to the other party."<sup>67</sup>

Without recapitulating its close application of the five *James* factors, which tipped in favor of the student plaintiffs,<sup>68</sup> the Court considered an additional factor, that of possible adverse publicity: "[T]his Court may also consider the fact that the case has received intense media coverage. The threat of harassment and public hostility is therefore potentially more severe and harmful than that in a less publicized case."<sup>69</sup> Based on the five *James* factors plus the additional sixth, the Court allowed the three student plaintiffs to proceed anonymously.

By 2004, these students' allegations were mooted once the orientation program had run its course (having been announced in May and finished in August 2002). Normally, there would be no constitutionally required "case or controversy to adjudicate. But an exception

obtains in any allegedly aggrieved situation that is “capable of repetition, yet evading review.”<sup>70</sup> As to the plaintiffs themselves, the situation they faced and the harms they feared simply had no chance of recurring. Had such an action been permissible if brought on behalf of other students, the outcome might have been different. In other words, if the student plaintiffs’ could have brought a “future class action” suit (as distinguished from a class action suit) where future harm may be legally prevented that might affect a class of prospective victims (even though that may be too strong a term), then the Court could have contemplated an injunction against UNC from ever again selecting a religious text for its summer orientation program. The Court recognized Justice Scalia’s dissent “for the proposition that a risk of harm to persons other than the complaining party may suffice under extraordinary circumstances,” but, as the Court was quick to add, “the current state of the law is otherwise.”<sup>71</sup> Thus, the plaintiffs’ injunctive demands were dismissed.<sup>72</sup>

The Court next granted defendant’s motion to “dismiss the nominal damages claim against Chancellor Moeser in his individual capacity as to the Establishment Clause claims based on qualified immunity.”<sup>73</sup> Qualified immunity shields state officials performing discretionary duties where the official’s conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>74</sup> Of course, the student plaintiffs alleged UNC’s violation of the Establishment Clause, which bars federal and state governments from endorsing, financing, or coercing any religious claims, initiatives, or beliefs, respectively. The Court applied the standard, three-pronged *Lemon* test, requiring that state action 1. evinces a secular purpose; 2. has the primary effect of neither advancing nor inhibiting religion; and 3. without causing excessive government entanglement in religion.<sup>75</sup> UNC’s actions would violate the Establishment Clause if any one of the three *Lemon* factors were not met. As for the first, the Court held: “Because UNC’s stated secular purpose does not appear to be a sham, this Court will give deference to this stated secular purpose.”<sup>76</sup> Can a religious text, such as the Qur’an (and especially the Qur’an), be studied for a secular purpose? The Court applied to following rationale to find that UNC’s purpose was indeed secular:

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The study of religious texts can be secular in purpose. If the religious text is presented as part of an objective secular program in which the school intends to explore the history, civilization, ethics, literary, or historical aspects of the text, or if the text is used in the study of comparative religions, the use of the religious text is secular.<sup>77</sup>

The Court found that UNC had satisfied Lemon's second inquiry in that "*Approaching the Qur'an* simply cannot be compared to religious practices which have been deemed violative of the *Establishment Clause*, such as posting the Ten Commandments, reading the Lord's Prayer or reciting prayers in school."<sup>78</sup> The excessive entanglement prong involves both "kind and degree."<sup>79</sup> The Court points out that the only institution to benefit from the reading program was UNC itself, and that there simply was no institutional affiliation with any Islamic organizations. Moreover, no Muslim clerics were present at any of the two-hour discussion sessions. In favor of the legal status of the academic study of religion, the Court pressed this decisive distinction:

The Supreme Court has made a distinction between "the discourse of the scholar's study or the seminar room" or the "merely descriptive examination of religious doctrine" and "the evangelist's mission station." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 868, 132 L. Ed. 2d 700, 115 S. Ct. 2510 (1995) (noting that an article discussing how Christ alone provides spiritual fulfilment [sic] fell in the latter category). UNC's orientation program involved the examination of both period writing, comparisons to earlier Arabic thought, and imagery as they relate to religious doctrine. It was scholarly discourse, not a proselytizing mission.<sup>80</sup>

The Court here makes a crucial distinction that has been absolutely vital to the legal, political, and fiscal survival of departments and programs of comparative religions across the U.S., Canada, and Europe. What used to be called "religious studies" is more properly termed the "academic study of religion." During my doctoral studies at the University of Toronto, what was called the Centre for Religious Studies at entrance in 1991 was later changed to the Centre for the

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Study of Religion, in order to disambiguate the term “religious” from “religious” orientation and exercise in the traditional, faith-based sense of the word. While the academic study of religion is necessarily “religious” as to its subject matter, it is decidedly secular as to its methodology. Of course, there are a number of “engaged” (religiously committed) scholars in the profession. However, they endeavor to make their work intersubjectively available by adhering to the canons of free inquiry and academic rigor.

After giving a ringing endorsement of academic freedom, the Court concluded the issue by saying: “In short, UNC’s orientation program passes the *Lemon* test. Because there has been no violation of the Establishment Clause, Defendant Moeser is entitled to qualified immunity as to the Establishment Clause claims.”<sup>81</sup> There remained the issue of the plaintiffs’ Free Exercise claim: “The Plaintiffs’ Motion for Leave to File a Second Amended Complaint will be GRANTED as it relates to the Pseudonymous Plaintiffs’ Free Exercise claims.”<sup>82</sup> Beyond some minor procedural issues, this decision paved the way for the final stage of the litigation, which took place several weeks later.

*Motion granted by, dismissed by* *Yacovelli v. Moeser*, 324 F. Supp. 2d 760, 2004 U.S. Dist. LEXIS 12815 (M.D.N.C., July 7, 2004)

The subsequent ruling had narrowed to a single issue, and the published opinion was correspondingly shorter. In *Yacovelli v. Moeser*,<sup>83</sup> decided on July 7, 2004, the very same U.S. district judge, Judge N. Carlton Tilley, granted UNC’s (D) motion to dismiss the plaintiffs’ Free Exercise claim and issued a memorandum opinion summarizing the facts and setting forth the reasons for his holding. In relating the instant case back to the 2002 actions, the Court encapsulated the procedural history in this nutshell summary:

A preliminary injunction was denied both by this Court and by the Fourth Circuit, and the orientation program took place as scheduled. Thereafter, this Court dismissed the Taxpayer Plaintiffs for lack of standing, dismissed any further claims for injunctive relief as moot, and dismissed any claims that the defendants violated the Establishment Clause. Plaintiffs were permitted to add new factual allegations as they

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related to the sole remaining claim, the Free Exercise Claim. The defendants have now moved to dismiss the Free Exercise claim.<sup>84</sup>

At this final stage of the litigation, the “sole remaining claim” was “the Free Exercise Claim.”<sup>85</sup> It did not rise to an actionable claim because the complaint failed to allege facts sufficient to state a claim for a Free Exercise violation. In other words, the plaintiffs failed to make their case. Judge Tilley enumerated four reasons for this:

The complaint does not allege a factual basis for the conclusion that UNC either 1. compelled affirmation of any particular religious belief, 2. lent its power to a particular side in a controversy over religious dogma, 3. imposed special disabilities on the basis of religious views or religious status, or 4. punished the expression of any particular religious doctrines.

There is not a sufficient factual or legal basis for the conclusion that UNC either compelled affirmation of Islam, or lent its power in favor of Islamic dogma.<sup>86</sup>

The Court had previously “found that UNC’s assignment was academic, and not religious, in nature” and that “UNC, instead of endorsing a particular religious viewpoint, merely undertook to engage students in a scholarly debate about a religious topic.” The ensuing discussion groups, moreover, “were likewise intended to encourage scholarly debate about the Islamic religion,” where “[s]tudents were free to share their opinions on the topic whether their opinions be positive, negative or neutral.”<sup>87</sup> The offending of some students’ religious sensitivities notwithstanding, nothing in the required reading assignment nor in the discussion sessions that followed amount to religious indoctrination or exercise. UNC’s original objective of helping students gain a more informed perspective on Islam in response to the tragic events of 9/11, and in sharpening their analytical and critical thinking skills in the process, has entirely to do with program design and not with any subterranean religious motives. Any positive portrayal of Islam was an incidental effect that, if nothing else, served as a counterpoint to already existing stereotypes of Islam in general and the deservedly negative public perceptions of Radical Islamism in particular.



## *The Constitutionality of Teaching Islam*

The whole issue of coercion was sidestepped when UNC revised its original requirement that all incoming students read *Approaching the Qur'an* and each write a reflective essay based on it. In accommodating those students who might find this assignment religiously offensive, UNC officials adopted an opting out policy. The Court recognized the positive value of this policy in saying: "Allowing students to express their own religious views, or to choose not to do so, did not punish student expression of religious beliefs. Instead, this type of assignment specifically encouraged students to address any and all views they may have had on either the Qur'an [sic] or on the Islamic faith."<sup>88</sup> The fact that there was no grade attached to the assignment was also important, in that a charge of religious coercion might have been possible had there been any negative academic consequences for opting out of the assignment, or even for boycotting the assignment altogether.<sup>89</sup> The Court concluded:

UNC implemented a freshman orientation program which did not infringe upon the rights of its students under the Free Exercise Clause. The Second Amended Complaint fails to provide sufficient allegations to show that UNC compelled students to perform acts which burdened their religious beliefs, or otherwise punished students on the basis of their religion. To the contrary, UNC implemented a program asking students to discuss a religion thrust into recent controversy, and to do so from an academic perspective. Part of the purpose of this program was to introduce students to the type of higher-level thinking that is required in a university setting. Students who were not members of the Islamic faith, probably the great majority of students, were neither asked nor forced to give up their own beliefs or to compromise their own beliefs in order to discuss the patterns, language, history, and cultural significance of the Qur'an [sic].<sup>90</sup>

### *Conclusion*

This is really a test case of religious pluralism and of its possibilities and limitations within the university context. The study of the Qur'an focalizes all these issues and intensifies them. The terrorist events of 11 September 2001 provided the catalyst. That dark day was the decisive

factor in the University of North Carolina at Chapel Hill's selection of *Approaching the Qur'an* as the required text for its 2002 summer reading program. The Family Policy Network's challenge of that choice was a judicial protest that took on national proportions. The following section restates the pedagogical case for the Qur'an and then reflects on the constitutional question (and the answer) provided by *Yacovelli v. Moeser*.

Muslims (including American Muslims, of course) have a coherent worldview, one that originates from the Qur'an itself. (This is not to obscure the contours of serious internal rifts within the Muslim community itself, and significant variances within Muslim self-understanding.) To appreciate the Qur'an is to develop a keener sensitivity to the operation of the divine in a culture once far removed from the Euro-American world but now increasingly an integral part of it. The Qur'an is a world unto itself, a palatial architecture of meaning that is multidimensional and comprehends the totality of the human experience. On the moral and spiritual foundation of the Qur'an, an entire history and civilization has been built. One can only gain from such an appreciation of the Qur'an's role in world history and in contemporary world affairs. Indeed, one may be enriched by a study of the Qur'an (as with the Bible as well), but only if one's prejudices are first abandoned.

Yes, the Qur'an is a text of monumental historical importance. Yet it may have an even greater contemporary relevance, for in an increasing number of western nations, the population of Muslims is beginning to surpass the number of Jews. Islam is rapidly entrenching itself as a French religion, as part of British society, as a feature of the Canadian mosaic, and as an essential element of the spiritual landscape of America. To acknowledge the beauty and depth of the Qur'an is not to convert to Islam, but to converse with it and with Muslims who are enlivened by it. Therefore, to know the Qur'an is to better prepare oneself for inevitable encounters with Muslims both in America and abroad – not as the exotic “other” somewhere in the distant Orient, but as the religion and way of life of our fellow compatriots at home – friends, neighbors, and, through increasing religious intermarriage, that of our immediate and extended families.

## *The Constitutionality of Teaching Islam*

The Qur'an can and should be taught in the University, not to convert students into pious Muslims, but to convert pious Muslim beliefs into something students can understand, so that they can appreciate the power of the book to influence those who believe in it. However, beyond the question of *why* the Qur'an should it be taught, there is the problem of *how* it should be taught within constitutional bounds. In whatever course and context it may be taught, the real challenge is how to engage students in the study of this text, and to assist them in discovering the Qur'an for themselves.

The Qur'an is a text of world-historical proportions that institutions of higher learning can scarcely afford to ignore, because our domestic life, as well as international affairs, will be increasingly informed by it. Discovering the Qur'an on a personal basis can be rewarding for its own sake. Studying the Qur'an will equip university students with a competence they are sure to find useful in an increasingly multicultural world, one-fifth of which is already under Islam's spiritual, political, and cultural authority, with an even greater part of the world affected by it. The Qur'an is the constitution of Islamic society in far more profound way than the Constitution is to American society.

The constitutionality of religious studies in university settings has generated a vigorous debate,<sup>91</sup> and the instant case was no exception. One original thesis, sure to spark a lively debate, is Leslie Griffin's distinction between the academic standard and the constitutional standard as to justifying the integration of religious studies in university curricula.<sup>92</sup> In the case of *Yacovelli v. Moeser*, the FPN's persistence preserved the issue, yet constitutional consistency prevailed. Constitutionally, the UNC's adoption of *Approaching the Qur'an* rested on solid ground, over and above FPN's bedrock faith in the merits of its challenge. The FPN's advocacy ultimately resulted in the UNC's vindication. While the subject matter (the Qur'an) was religious, the University of North Carolina's approach was not. Judge Tilley's rationale, although it did not set precedent, faithfully followed it.

The UNC Qur'an controversy should be viewed within a broad spectrum of cases that form the body of educational law as regards the teaching of religion in public schools and institutions of higher

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learning. The Courts have already weighed in on the University of North Carolina Qur'an controversy. While reading the Qur'an cannot be required, it is required reading for religious, political, cultural and global literacy. In its own way, it is a democratic as well as academic enterprise. It strengthens our Constitution by testing its limits and expanding the juridical horizons of this quintessentially American counterpart of the Qur'an.

## NOTES

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