

Nos. 00-99005 and 00-99006

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**STEVIE LAMAR FIELDS,**

*Petitioner-Appellant,*

v.

**JILL BROWN, WARDEN OF CALIFORNIA  
STATE PRISON AT SAN QUENTIN,**

*Respondent-Appellee.*

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**ON HEARING EN BANC ON APPEAL FROM THE CENTRAL DISTRICT  
OF CALIFORNIA**

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**BRIEF *AMICUS CURIAE* OF WALLBUILDERS, INC.,**

in support of Respondent-Appellee

Supporting Affirmance

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## **FRAP RULE 26.1 DISCLOSURE STATEMENT**

*Amicus Curiae* WallBuilders, Inc. has not issued shares to the public, and it has no parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can own more than 10% of stock.

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## INTEREST OF THE *AMICUS CURIAE*

*Amicus Curiae*, WallBuilders, Inc., is a non-profit corporation dedicated to the restoration of America's moral and religious heritage. Possessing one of the largest privately held libraries in the nation with more than 70,000 documents predating 1812, it specializes in conducting research using primary source documents. This expertise in America's history and religious heritage causes this organization to take significant interest in the present case. Further, WallBuilders, Inc. has an interest in the effect this case will have on a juror's use of the Bible.

The Brief is filed pursuant to consent of Respondent/Appellee and the Motion for Leave to File a Brief *Amicus Curiae*. Multiple attempts were made to contact counsel for the Petitioner/Appellant; counsel for the Petitioner/Appellant has neither consented nor denied consent for this brief.

## ARGUMENT

### **I. THIS COURT SHOULD FIND THAT JUROR USE OF THE BIBLE IS NOT EXTRINSIC EVIDENCE AND, THEREFORE, DOES NOT HAVE AN INJURIOUS EFFECT ON THE VERDICT BECAUSE THE USE OF BIBLE SCRIPTURES IS INTERWOVEN IN AMERICAN CULTURAL LITERACY.**

America's use of the Bible and religion since the birth of the nation can hardly be a point of contention. The Supreme Court recognized that "[w]e are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). The Bible has also been used in administering

oaths for public offices *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 26-27 (2004) (Rehnquist, C. J., concurring in the judgment) (recounting George Washington’s inauguration during which he took his oath on and kissed the Bible), and the Bible still has a place in some courtrooms to administer oaths for witnesses, e.g., N.C. Gen. Stat. § 11-2 (2003) (“Judges and other persons who may be empowered to administer oaths, shall [with certain exceptions] require the party to be sworn to lay his hand upon the Holy Scriptures . . . .”) The Supreme Court has also recognized the biblical principal of *lex talionis*, an “eye for an eye,” as a historical basis for criminal sentencing in *Payne v. Tennessee*, 501 U.S. 808, 820 (1991). Further, the Court has noted that religion also plays a role within the jury room. A jury should often decide “the choice between life imprisonment and capital punishment . . . [as] a matter of reasoned moral judgment.” *Sawyer v. Whitley*, 505 U.S. 333, 370 (1992) (Stevens, J., concurring in the judgment). From application in courtrooms to presidential inaugurations, the Bible and its principles are imbedded in the American political and legal system.

However, the Bible and its principles are imbedded in American culture, extending far beyond these particular uses in the courtroom and in the government. Biblical application extends beyond oaths and criminal sentencing; the Bible and its principles are recognized in many different non-religious sectors of American culture. Knowledge and facts that are dispersed throughout the dominant culture

are known by all culturally literate people. The term “culturally literate” refers to one who “possess[es] the basic information needed to thrive in the modern world.” E.D. Hirsch, Jr., *Cultural Literacy: What Every American Needs to Know* at xiii (Vintage Books 1988). In order to be conversant in and understand allusions and references of the dominant culture’s literature and language, basic background knowledge of key concepts becomes essential. A shared body of knowledge enables people of different generations and ethnicities, and people from different parts of the country to be able to understand each other. *Id.* at xii. Cultural literacy requires a minimal comprehension of concepts in areas such as science, history, literature, and religion. *Id.* at xi.

This brief will demonstrate that biblical understanding is essential for cultural literacy. Not only are basic biblical principles reflected in the culture, but specific scriptures are also echoed in well-known proverbs. Therefore, the use of scripture in jury deliberations in this case was not extrinsic evidence and did not have an injurious effect on the verdict.

A. Use of the Bible Should Be Allowed in Jury Deliberations Because Allusions to the Bible Can Be Found Woven Throughout Culture Within Literature and Media.

The theory of cultural literacy has been advanced by E.D. Hirsch, Jr. and his colleagues in *The New Dictionary of Cultural Literacy: What Every American*

*Needs to Know* (Houghton Mifflin Co. 2002). The main point of cultural literacy is that

[a]lthough it is true that no two humans know exactly the same things, they often have a great deal of knowledge in common. To a large extent this common knowledge or collective memory allows people to communicate, to work together, and to live together. It forms the basis for communities, and if it is shared by enough people, it is a distinguishing characteristic of a national culture.

*Id.* at x. Within each chapter in the dictionary, the authors list key facts or themes that are essential to American cultural literacy.

The Bible is inserted boldly as the very first chapter in this dictionary. *Id.* at [v]. (“The Bible” is followed by chapters on “Mythology and Folklore,” “Proverbs,” “Idioms,” “American History Since 1865,” and “World Politics” to list just a few chapters). The introduction to the Bible chapter begins by stating the reason for the placement: “The Bible, the holy book of Judaism and Christianity, is the most widely known book in the English-speaking world.” *Id.* at 1. Further, Hirsch states: “No one in the English-speaking world can be considered [culturally] literate without a basic knowledge of the Bible.” *Id.* At minimum, someone should comprehend “what is meant when someone describes a contest between a David and Goliath, or whether a person who has the ‘wisdom of Solomon’ is wise or foolish . . . .” *Id.*

Among the multitude of key biblical points listed in the chapter are the principles of “eye for an eye,” *id.* at 8, and “do unto others as you would have them

do unto you,” *id.* at 7. These principles listed in *The New Dictionary of Cultural Literacy* are similar to phrases submitted by the juror in this case as the ideas of an “eye for an eye,” and “fitting punishment to crime,” *Fields v. Brown*, 431 F.3d. 1186, 1207 n.12 (9th Cir. 2005). That chapter also lists a number of other Bible passages which are well-known in American culture. For example, the principles “Judge not that you should not be judged,” *id.* at 14, and “Let he who is without sin cast the first stone,” *id.* at 15, are references to Jesus’ teachings that no one is worthy to condemn another human being. Adam and Eve, the Genesis account of creation, Moses and the Ten Commandments, and the Prodigal Son are among other examples which are included in the dictionary as essential stories to know. *The New Dictionary of Cultural Literacy*, Third Edition (2002), <http://www.bartleby.com/59/1/> (last visited Oct. 26, 2006). As demonstrated by Hirsch, biblical principles and Bible stories are pertinent to a basic cultural understanding. Each juror should have a minimum recognition and understanding of the basic principles of biblical revenge and punishment.

Supporting Hirsch’s theory that a basic biblical understanding is essential to comprehending American culture, biblical references are found throughout the great works of literature taught in school systems in the United States. For example, University of Virginia Professor, Mark Edmundson, in his book *Why Read?*, at xii (Bloomsbury Pub. 2004), notes that “[r]eligion is the right place to

start a humanities course” because understanding allusions in literature requires comprehension of the biblical myths that can be found within those great works. Further, Northrop Frye, a distinguished literary theorist and lecturer, shows “[h]ow the Bible . . . resonates throughout the secular literary tradition: Chaucer, Shakespeare, Shelley, Blake, T.S. Eliot.” Northrop Frye, *Words with Power: Being Second Study of the Bible and Literature*, author’s quote on dustcover, (Harcourt Brace Jovanovich 1990). Northrop describes the Bible as the “single most important influence in the imaginative tradition of Western Literature” in *The Great Code: The Bible and Literature*, at xii (Harcourt Brace Jovanovich 1982). For Frye, the Genesis account of creation is one of the most prevalent themes throughout literature; Milton’s *Paradise Lost*, D.H. Lawrence’s *The Rainbow*, Virginia Woolf’s *To the Lighthouse*, and Shakespeare’s *King Lear* all reflect knowledge of the Genesis creation account. Northrop Frye, *The Mythical Approach to Creation, in Myth and Metaphor: Selected Essays 1974-1988* 238-250 (Robert D. Denham, ed., U. Press of Virginia 1990). In order to grasp the full power of the creation meanings in great works of literature, one must first understand the biblical texts.

While some may argue that biblical references in literature are primarily relegated to European works and not directly to American culture, Frye explains that the American culture of literature is “essentially the culture of Western

Europe” and can be characterized by a group of “stories derived from the Bible.” Northrop Frye, *The Survival of Eros in Poetry, in Myth and Metaphor: Selected Essays 1974-1988* 44 (Robert D. Denham, ed., U. Press of Virginia 1990). In that essay, Frye examines biblical references to love and good and evil which are prevalent throughout Shakespeare’s works, Dante’s *The Inferno*, and in John Donne’s poetry; and how those same biblical ideas transcend all literature. *Id.* Both Edmundson and Frye espouse similar theories to Hirsch’s cultural literacy; in order to truly understand and appreciate the great works of literature, one must first know and comprehend the Bible.

In addition to the prevalent Biblical allusions and analogies in literature, the *current* music and art culture also requires a basic knowledge and understanding of the Bible in order to fully comprehend the modern media. For example, the popular television series, *Lost*, contains many different allusions to the Bible. In an episode entitled *The 23rd Psalm*, a prominent character, Mr. Eko quotes the 23rd Psalm and also carves scriptures from the Bible into his “Jesus stick.” (ABC television broadcast January 06, 2006), TV.com, <http://www.tv.com/lost/the-23rd-psalm/episode/546047/trivia.html> (last visited Oct. 19, 2006). The words to Psalm 23 also appear in the first lines of Coolio’s rap song *Gangsta’s Paradise*: “As I walk through the valley of the shadow of death . . .” *Fantastic Voyage: The Greatest Hits Album*, (Rhino Records 1995). Lyrics available at <http://www.metro>

lyrics.com/lyrics/15308/Coolio/Gangsta's\_Paradise (last visited Oct. 17, 2006). In another example of Bible quotations in modern culture, the popular music group, U2, also writes songs with biblical references. For instance, U2's album *War* contains two songs quoting the Bible: "Drowning Man" is a reflection of Isaiah 40:31 ("They will soar with wings as eagles; they will run and not grow weary.") and "40" contains the words from Psalm 40. U2, *War* (Island Records 1983), *Three Chords and the Truth: War-U2's Third Album*. <http://www.threechordsandthetruth.net/u2albums/war.htm> (last visited Oct. 18, 2006). These few examples of prevalent Bible use in the media could be multiplied many-fold with other illustrations of the pervasiveness of biblical references in American pop culture.

Thus, the Bible is not limited to religious circles, but rather is prevalent in many different settings. Any of the jurors would at least have some knowledge or recognition of common Bible scriptures from literature or popular media. Since knowledge of the Bible is a pre-requisite for fully comprehending the mainstream culture, use of the scriptures is not extrinsic evidence. Within a jury room, such knowledge and recognition of the Bible is essential and intrinsic to a juror; biblical knowledge is a reflection of the culture.

B. The Specific Scriptures Used By the Juror In This Case Are Not Extrinsic Because Those Scriptures Are Cultural Themes Recognizable By Americans.

More specifically, some of the principles contained in the juror's submitted scriptures are reflected by commonly known proverbs. In a journal article discussing the foundational basis for many of the English proverbs, the Bible is cited as one of the primary sources of those proverbs. Chan Pui-Man, *A Study of Biblical Allusions in English Proverbs* 113, 115 (published article with Kainan University) (Taiwan), <http://www.google.com/search?q=cache:ajO1xdOrprgJ:www.knu.edu.tw/knu1/> (last visited Oct. 20, 2006). (Note that the author's use of the term "English proverb" applies equally to England and to other English-speaking countries. *Id.*) The article is an attempt at an exhaustive collection of proverbs that are either directly found in the Bible, changed slightly from the biblical text, or those proverbs with an allusion to the Bible or based upon biblical principles. *Id.* at 116. Similarly to E.D. Hirsch's cultural literacy theory, this article recognizes that knowledge of the Bible transcends people groups of Christians and non-Christians because the "words and sayings of the Bible have been welded in the daily languages and life of people and have become an important part of their culture." *Id.* at 115.

In the author's analysis of notable English proverbs which are based upon the Bible, two proverbs stand out as principles based upon the scriptures submitted

by the juror in the case at hand. The proverb, “Blood will have blood” is based upon Genesis 9:6, “Whoso sheddeth mans blood, by man his blood shall be shed.” *Id.* at 121. Additionally, the proverb “An eye for an eye,” and the idea of revenge are based upon the passage in Exodus 21:23-25. *Id.* at 129. While jurors might not be knowledgeable of the specific passages in the Bible, the majority of jurors would recognize the English proverbs associated with those scriptures.

While those two proverbs are the most pertinent to the case at hand, they are not the only examples of biblically inspired English proverbs. The article also discusses thirty-nine English proverbs that are quoted directly from the Bible. *Id.* at 116. Among the proverbs in that group are: “A soft answer turneth away wrath,” and “It is more blessed to give than to receive.” *Id.* Forty-two proverbs are based upon Bible verses, including “Man cannot live by bread alone” and “Turn the other cheek.” *Id.* at 119. Additionally, six proverbs are extracted from Bible stories. *Id.* at 123. For instance, the proverb, “Forbidden fruit is sweetest,” is a reflection of the depiction of the Fall as Adam and Eve ate the forbidden fruit in Genesis. *Id.* Finally, a number of other proverbs are based upon Jesus’ teachings from parables and the Sermon on the Mount, while another group of proverbs are based upon Bible characters, such as Moses and Samson. *Id.* at 130-133. As demonstrated above, the Bible is a dominant source for many familiar proverbs.

Even though it has been argued that the use of the Bible is extrinsic evidence for the jury deliberations, those principles are common proverbs in the English language. Even if the jurors were not aware of the specific verses cited, most of those jurors would recognize the proverbs or the principles of those scriptures. Because the Bible is commonly used and frequently cited in several different mediums in American culture, its use is not extrinsic in the jury room. Since biblical references are intrinsic and common to main-stream culture, it follows that those biblical ideas would not have an injurious effect of the verdict.

### **CONCLUSION**

For the foregoing reasons, and for other reasons stated in the Appellant's brief, this Court should find that a juror's use of the Bible is not extrinsic evidence and does not have an injurious effect on the verdict.

Respectfully Submitted,  
this 27th day of October, 2006

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## CERTIFICATE OF SERVICE

I hereby certify that I have duly served the attached Brief *Amicus Curiae* of The National Legal Foundation in the case of *Fields v. Brown*, Nos. 00-99005, 00-99006, on all required parties by depositing the required number of paper copies in the United States mail, first class postage, prepaid on October 27, 2006, addressed as listed below. The required number of paper copies were filed in the same manner on the same date.

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