

A STANDARD FOR LIVING

WHAT WE CAN LEARN FROM PIMPLES, DIMPLES AND HANGING CHADS

BY GEORGE INGRAM

An American Case

In November of this year, we shall witness the next congressional election in the United States. Many months have now elapsed since November 2000 when the news media and general conversation were focused on the bizarre vote-counting spectacle in Florida during the last presidential election. Many people will long remember the television and newsprint coverage of the vote counters holding up ballots to the room lights to discern whether or not there was a sufficient impression on the face of the ballot to determine the voter's preference for a particular candidate. To some vote counters, the degree of impression made by the voter's stylus on the ballot--- referred to as a "pimple", a "dimple" or a "hanging chad"---when the ballot was viewed in the backdrop of a nearby light bulb or other room light, was supposed to be conclusive of the voter's party affiliation. Using such procedure, it appeared that a voter's political preference was to be dependant on the strength of the voter's impression on the ballot as well as the wattage of the room light. To compound the confusion of the process, all jurisdictions in Florida did not use the same criteria when counting the ballots. In those "swing" counties where the process became not only a political but also a legal issue, the procedure was subjective, based only on the interpretation of the small band of counters of whom some may have been guided by their own political affiliation. The evidence from court proceedings clearly indicated that different standards which were used for accepting or rejecting contested ballots sometimes varied from one recount team to another not only from county to county but also from among the members of a county's recount team. For example, a monitor in the Miami-Dade county office testified at trial that he observed three members of the county canvassing board applying different standards in determining what constituted a legal vote. Testimony at trial revealed that at least one county changed its evaluation standards during the counting process. Palm Beach county began the vote-counting process with a 1990 guideline which precluded counting completely attached chads, then switched to a rule that deemed a vote to be legal if any light could be seen through a chad, then reverted back to the 1990 rule, then abandoned any pretence of a rule only to have the Florida court order that the county should consider dimpled chads legal. Nevertheless, the Florida Supreme Court ratified such uneven treatment and mandated that the recount totals from two counties---Miami-Dade and Palm Beach---be included in the certified total. There was not an applicable objective standard with which all vote counters had to judge themselves in order to carry out their responsibility fairly and effectively.

After much litigation in the courts of Florida, legal presentations on behalf of both political parties and other intervenors were made to the United States Supreme Court in Washington. That court decided that the manual recount process ordered by the Florida Supreme Court, without specific standards to implement its order to discern the "intent of the voter", did not satisfy the minimum requirement for non-arbitrary

treatment of a voter's expectation under the Equal Protection Clause of the Constitution. Therefore, the process was declared to be unconstitutional. The U.S. Supreme Court maintained that the Constitution and fundamental justice required that equal weight must be accorded to each vote and equal dignity owed to each voter, a situation which was seen as not to exist where there was such a subjective standard being used in the vote counting process. The Court determined that a manual recount of ballots on which machines had failed to detect a clear vote for President, in order to ascertain the "intent of the voter", did not provide sufficient standards to ensure uniform treatment to all voters. For a proper state recount in a presidential election to be conducted in compliance with the requirement of equal protection and due process, it would require not only the adoption of adequate state-wide standards for determining what was a legal vote but also workable procedures to implement them and orderly judicial review of any disputed matters that might arise. Such did not exist in the Florida situation. Consequently, the U. S. Supreme Court remitted the case to the Florida Supreme Court to direct a recount to be taken with the important added proviso that the subjective procedures used previously were not to be repeated and that more acceptable standards, if practicable, be implemented. Since this could not be done within the short time permitted by law, the contest was resolved and the election vote declared final as was previously certified by the Florida Secretary of State.

A Canadian Case

The significance of fair and acceptable standards as basic criteria to resolve important issues has also been applied by the Supreme Court of Canada. For example, in 1988 a significant case (Morgentaler) was decided by that court regarding the constitutionality of a section of the Criminal Code which authorized abortions to be performed only after certification was granted by therapeutic abortion committees of accredited hospitals. After considerable analysis of the issues, including the administrative procedures involved, the court maintained that a fatal flaw in the legislation was the failure to provide an acceptable uniform standard for therapeutic abortion committees to adopt in determining under what circumstances such an operation should be performed. From the trial evidence, the Supreme Court noted that each therapeutic abortion committee was free to establish its own guidelines and many such committees could, and did, apply arbitrary and subjective criteria. The Court, therefore, held that the "absence of any clear legal standard to be applied by the committee in reaching its decision is a serious procedural flaw", and thus did not comply with the principles of fundamental justice. The Court applied its long-standing principle that its purpose was to interpret, not to legislate, law and stated that "there can be no escape from the fact that Parliament has failed to establish either a standard or procedure whereby any such interests might prevail over those of the woman in a fair and non-arbitrary fashion." Because of the Charter of Rights which is deemed to protect equal treatment under the law, the above-mentioned section of the Criminal Code in dispute was declared to be unconstitutional and thus invalid.

What important lesson for all of us, therefore, can be derived from these two cases decided in the highest courts of the United States of America and Canada respectively? What have "pimples, dimples and hanging chads" got to do with therapeutic abortion committees? Clearly, there was a lack of acceptable, practicable and equitable objective standards to give uniform direction to the participants in both

cases. Only inappropriate, subjective opinions - whether counting ballots or deciding whose request for an abortion was to be accepted - were used in the circumstances.

Standards In Our Law

For centuries, the importance of appropriate standards have been a foundation of both our criminal and civil law, much of which we inherited from English legal tradition at the time of confederation. In criminal law, an accused must be found to be guilty "beyond a reasonable doubt"--- a high standard. In civil law, a plaintiff must prove the merits of the case "beyond the balance of probabilities" before the court will grant any appropriate damages or other relief.

We live in a culture in which much of our movie, TV, publishing and audio-visual media is focused on violence, low standards of morality and disrespect for life, often justified under the guise of our allegiance to freedom of expression. Without adequate standards as guidelines for decision-making, confusion often results. For example, many cases have shown that legislators, judges and juries have had difficulty in defining what constitutes obscenity. Sufficient objective guidelines have been absent with the result that the decision-makers have merely resorted to what the evidence seemed to reflect as to what might be the "prevailing community standard". But by what standard can the "prevailing community standard" be judged to be acceptable? If you think that your opinion should prevail whereas I am convinced

that mine should be accepted, who is to say who is right? By what objective, acceptable criteria should both of us be aware that we are to be subject? In our present culture, temporal pursuits for pleasure and subjective impressions of what appears to be proper often prevail. If a person does not have acceptable standards with which to judge himself or herself as well as others, then that person is destined merely to follow the dictates of his/her own desires without an objective standard with which to determine whether or not such decision is justifiably appropriate.

Scripture can be an important guide. In Isaiah 53:6, the writer succinctly referred to a culture which promotes subjective standards as being acceptable:-----"we all like sheep have gone astray, each of us has turned to his own way." In Genesis 39:9, when responding to the seductive enticements of Potiphar's wife to become a participant in her adultery, Joseph boldly, with obvious conviction, stated his standard with which he judged himself when he replied "....How can I do this great wickedness and sin against God?"

After over thirty years in the general practice of law, it has become apparent to me that people often incur legal problems because they have either not been taught, have forgotten or, more often, have wilfully disregarded acceptable standards with which they should judge themselves. If a child, on a regular basis, is neither taught such time-honoured standards in the home, nor given the opportunity to receive such teaching in a church which provides authoritative, biblically-based teaching by dedicated teachers, or through other means for acceptable values-based education, then the vacuum created in that child's development by the omission of such constructive influences often can be replaced by questionable TV and other media culture. The evidence in many criminal and civil cases have shown a link between a person's behaviour and what has been that person's cultural influences. Unfortunately, many people have had to learn in court the harsh reality that there are

objective standards which a person must respect and by which he or she must be judged.

A Thought To Ponder

A good place to begin the search for acceptable, objective standards for living is with serious teaching and meditation on the Ten Commandments (which are not merely ten suggestions) and in a meaningful study on both the teachings of Jesus Christ and on the lives of biblical characters. In so doing, the time-honoured principles learned can be useful guidelines for effective living.

With the human consequences of today's rapid explosion of technology, some so-called "advances" involve ethical and moral considerations. Many people are looking to the church to provide some guidance for acceptable values or standards to facilitate decision making. Issues affecting the human cloning, stem-cell research involving fertilized embryos, surrogate motherhood, capital punishment, abortion, etc., demand, at the table of discussion, the presence of God's truth and time-honoured acceptable standards. Sadly, many Christian denominations and other related groups have been eloquently uninformed, intentionally quiet or obviously negligent in this responsibility with the result that secular world influences have often predominated and have been more convincing to courts, legislators, journalists and other media commentators. The media may be the message, but the real issue is what is the quality of the message.

In our present society, much time, effort and attention is spent on measures to improve our standard of living. Surely a more important consideration for each of us is what should be our standard for living.

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