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## Confusion Twice Confounded

Walter White

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## BOOK REVIEWS

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CONFUSION TWICE CONFOUNDED: THE FIRST AMENDMENT AND THE SUPREME COURT, by *Joseph H. Brady*. Seton Hall University Press, South Orange, N. J., 1954. Pp. 192. \$3.00.

*Reviewed by*

WALTER WHITE, LL.B.\*

When the next case bearing on the relation between church and state reaches the Supreme Court, counsel on the side of religion, if sufficiently intrepid, might submit as his brief a copy of *Confusion Twice Confoounded* — and then duck!

The book could, no doubt, lead the Justices to construe the First Amendment correctly, for it is a scholarly, lucid exposition of the place of religion within the Constitution. But it is also an incisive, indignant condemnation of the "incredible inconsistency, bad history, worse logic, inaccurate citation, gross distortion" which the author finds were the tools used by the Justices to erect their "high and impregnable wall of separation" between church and state.

On the authority of the author's profound research it may safely be said that the Framers of the Constitution planned no wall.<sup>2</sup> What they forbade was the establishment of a national religion enjoying the exclusive patronage of a national government.<sup>3</sup> Thus they wrote, and the people adopted, as the first phrase of the First Amendment: "Congress shall make no law respecting an establishment of religion."

They did not ban government aid to religion,<sup>4</sup> else we would have no chaplains in our armed forces.<sup>5</sup> Nor did they ban cooperation between church and state,<sup>6</sup> else chapel attendance could not be required at West Point.<sup>7</sup>

The Justices, however, struggled against the

plain meaning of the words of the Framers and, by drawing "a rule of law from a metaphor,"<sup>8</sup> built the "wall of separation" that appears in the opinions in the *Everson* parochial school bus case,<sup>9</sup> the *McCollum* on-premises released time case,<sup>10</sup> and the *Zorach* off-premises released time case.<sup>11</sup> Monsignor Brady discusses and thoroughly analyzes the eleven opinions in these cases, and, for good measure, the decision in the *Saia* sound-truck case,<sup>12</sup> and concludes that the Court, contrary to the intent of the Framers, has declared unconstitutional any use of public funds or property for any purpose of a religious nature.<sup>13</sup> Logically, therefore, our courts act unconstitutionally in opening their terms with prayer.

Lawyers who are familiar with these cases and with other studies of them will appreciate Monsignor Brady's fresh handling of the subject. Those not familiar with the cases will be amazed to learn in this book what has been added to our constitutional law.

If adequately distributed (some Catholic bookstores have not had it in stock), the book will surely promote more widespread recognition of the grave implications in the thinking of Supreme Court Justices on the question of the relation between church and state. With that recognition, then may come from "better informed judges" a construction of the First

*(Continued on page 256)*

\*Member of the Massachusetts Bar.

<sup>1</sup> Brady, *Confusion Twice Confoounded* 157 (1954).

<sup>2</sup> *Id.* at 9, 10.

<sup>3</sup> *Id.* at 10, 14, 16, 26, 49.

<sup>4</sup> *Id.* at 16, 26.

<sup>5</sup> *Id.* at 29.

<sup>6</sup> *Id.* at 14, 35.

<sup>7</sup> *Id.* at 33.

<sup>8</sup> *Id.* at 134, 137, 158, 159.

<sup>9</sup> *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

<sup>10</sup> *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948).

<sup>11</sup> *Zorach v. Clauson*, 343 U.S. 306, 317 (1952) (dissenting opinion).

<sup>12</sup> *Saia v. New York*, 334 U.S. 558 (1948).

<sup>13</sup> Brady, *Confusion Twice Confoounded* 190 (1954).