

Court Answers on School Prayer Issue Listed Again

(In Baltimore, Md., recently, William J. Murray, III, a 16-year-old atheist, tried to obtain a court warrant charging another 16-year-old heeded him by waving a rosary in his face and shouting: "I believe. I believe." The incident aroused widespread interest because the U.S. Supreme Court will decide soon, in cases involving young Murray and others, whether Bible reading and the Lord's Prayer in tax-supported public schools are permissible under the U.S. Constitution. The issues and highlights of arguments heard by the court are set forth in the following dispatch.)

By CHARLOTTE G. MOULTON
United Press International
Washington - (UPI) - "When you pray, enter into thy closet and when thou hast shut thy door, pray to thy Father which is in secret."

Jesus spoke these words in the sermon on the Mount (Matthew 6:6).

Supreme Court Justice Hugo L. Black referred to them recently during arguments on whether Bible reading and the Lord's Prayer are permissible under the Constitution as opening exercises in public schools.

Passage Eyed
The passage may have special significance for Americans trying to think their way through this emotion-charged issue. As one lawyer put it, the cases arouse thoughts "about the nature of man and his existence here on earth."

Black wrote the opinion which last term struck down New York's state - composed school prayer. Judging by the outburst that greeted this decision, almost everybody has an opinion on the subject and wants to express it.

The criticism reached such a pitch that one member of the court, Justice Tom C. Clark, took the unusual step of attempting in a public speech to quiet things down. He explained that the decision was a narrow one applying only to a "state-written prayer circulated by a school district to state - employed teachers with instruction to have their pupils recite it in unison at the beginning of each school day in state-owned buildings."

First Amendment
The first amendment says: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The states for many years have, through the 14th amendment, been subject to the same prohibition. "No" means "no," Clark said. "This was all the court decided."

Many legal observers who followed arguments on now-pending Baltimore and Philadelphia area cases insist, however, that unless the court backs away from its New York ruling the same reasoning controls the Lord's Prayer and Bible reading cases.

The general contention of state officials is that opening the school day with the Lord's Prayer is part of the national heritage; that the exercises have outgrown their purely religious origins and merely teach moral and ethical precepts.

Eroses Contact
They say that if these practices are ruled out they foresee "a steadily increasing erosion" in other forms of church-state contact.

The mentioned chaplains in both houses of Congress, the armed forces, service academies and federal hospitals and prisons; exemptions of religious organizations from the federal income tax; deductibility of gifts to religious institutions, and the like.

FAA Notes Rise in Airport Activities

The Federal Aviation Agency has announced that increases in general aviation flying during 1962 accounted for the highest total air traffic figure ever recorded - 28,201,000 landings and takeoffs at 270 airports served by FAA control towers.

The tower at Chicago's O'Hare International Airport was the nation's busiest, handling a total of 417,380 landings and takeoffs, about 99,000 more than 1961.

The total pushed last year's leader, Los Angeles International Airport, into second place with 344,053 operations. O'Hare also had more itinerant, airline and instrument operations than any other airport in the country.

Van Nuys Airport in California retained its lead of last year in general aviation itinerant operations with 141,983 takeoffs and landings.

Medford, in total aircraft operations, was in 211th place with 54,261. Under the heading of itinerant aircraft operations for the calendar year 1962 the Medford tower ranked 190th with 38,328.

They say the provision for excusing any child who does not want to take part in the opening exercise is ample protection for those who do not approve of it.

The plaintiffs in the Baltimore case - Mrs. Madalyn E. Murray and her 16-year-old son William, both atheists - challenged a rule requiring reading the Bible and/or recitation of the Lord's Prayer without comment every morning. This rule was set up in 1955 by the board of school commissioners.

Contest Law
A Unitarian couple, Mr. and Mrs. Edward L. Schenck, filed the Pennsylvania case, contesting a state law which requires that 10 verses of the Bible be read without comment at the opening of each school day. The Schencks have a daughter in Abington, Pa., high school.

Mrs. Murray and the Schencks argue that the challenged practices favor the Christian religion over others and certain Christian groups over others.

Besides being an "establishment of religion," they say, the practices also interfere with the guarantee of free exercise of religion. This, they contend, is because public action must be taken by the children in order to take advantage of their right not to attend a religious ceremony. At the same time pressure is exerted on them to attend.

Verbal Battle
The arguments provoked a verbal free-for-all seldom equaled in the sedate court chamber which was filled to overflowing with an attentive audience.

The religious affiliations of the members of the court are varied. Chief Justice Earl Warren designates himself as a Protestant. Black comes from a Baptist background.

Clark and Justices William O. Douglas and John M. Harlan are Presbyterians. Justices Potter Stewart and Byron R. White are Episcopalians.

Justice William J. Brennan Jr. is a Roman Catholic and Justice Arthur J. Goldberg is Jewish.

Like everybody else, the justices had a lot of ideas to discuss as each attorney took over the podium to argue. Only Clark had practically nothing to say.

The most outstanding development was a spasmodic verbal duel during the entire argument between Black and Stewart, the lone dissenter in the New York case.

Stewart Speaks
Stewart began by remarking that he had never read anything in the first amendment about "a wall of separation between church and state," a phrase frequently used in church-state controversies and mentioned by the first attorney to speak.

"Why can't the child who doesn't want to participate just walk away?" he inquired. Stewart said there was a tendency to lump the two clauses of the first amendment together when actually they sometimes conflict. If a majority wanted to open the school day with prayer, the practice might be called an "establishment," he said. But stopping it would interfere with "free exercise" by them of their religion.

He said he was not advancing an answer to the conflict but merely pointing it out.

Stewart also suggested that the Baltimore case might merit a trial to determine the compulsions on a reluctant participant to conform and the results if he does not.

When it was generally agreed that a few moments of silence would not be unconstitutional, Stewart remarked to Mrs. Murray's attorney:

State Decision
"Your client could stand there and think about his disbelief."

The justice made the point that in America's early days many states had "established" religions. He said one view is that the "establishment" clause was included in the first amendment for the express purpose of leaving this matter entirely up to the states.

Black came back with the observation that, while the majority has a right to freedom of religion, that right may not be exercised just anywhere. He pointed out that a group might feel moved to come into the Supreme Court and pray while court was in session but that wouldn't be allowed.

He suggested that allowing the majority to select public school prayers reduces the Constitution's guarantee to a kind of "local option."

Black Skeptical
"What happens if you win?" Black asked a lawyer for Baltimore City. "If you could have three minutes of prayer, couldn't you have 40? Or take all your readings from the sacred book of one religion or sect?"

He wondered what would happen if some one moved to substitute the Book of Mormon for the Bible in Baltimore.

As for the results of the program on non-participating children, Black asked: "How can you assume there is never any pressure on a little child when he has to step aside?"

Chief Justice Warren questioned a state argument that the main issue is between theism (belief in a supreme being) and non-theism.

"Aren't there many groups who believe as fervently in God as anyone else who opposes this?" he inquired.

He mentioned Jewish groups.

The chief justice was also interested in Hawaii, where there are many Buddhists. He posed the imaginary situation of 51 Buddhist children and 49 Christians in class together. The majority would then choose a Buddhist ceremony to open classes and the Christians would walk out? He asked.

Finan Doubtful
(The answer by Maryland Atty. Gen. Thomas B. Finan was "Yes.")

Goldberg found it hard to follow the state argument that the opening exercise is not "religious."

"Aren't you denigrating the Bible?" he asked. "If the Bible is anything, it is the greatest religious document the world has ever had. But you say you are reading it for some other reason."

He wondered why the Pennsylvania law referred to the Bible as the "Holy Bible" if it were not a religious document.

Douglas, a minor participant, jumped into the fray when a lawyer insisted on the right of a majority to determine a school prayer.

"Then there would be a contest as to which church could get control of the school board," he remarked.

Both White and Brennan wondered why it was necessary to excuse children if only general morals, and not religion, were being taught.

Is Sectarian
"You don't excuse the children from arithmetic, do you?" Brennan asked. White noted that the Douay version of the Bible has sectarian aspects. Further, he noted that the Bible reading in the Abington school is done over a loud speaker.

"Is there any place in school a pupil could go and not hear it?" he asked.

(Nothing is in the record on this subject because no one ever asked to be excused.)

Harlan seemed to feel that the court had reached a turning point. He suggested that the justices must decide whether they should not re-examine the whole line of church-state cases of recent years.

These include, among others, the McCollum decision of 1948, wherein the court ruled out a religious teaching plan carried on in the public schools of Champaign, Ill., by a joint Jewish-Catholic-Protestant council.

More recently the court has ruled that holding a public office in a state may not be conditioned on a belief in God.

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