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IMPORTANT DECISION OF UNITED STATES SUPREME COURT

Case From Champaign, Illinois - On What The Court Passed - The Baptist Public Relations Brief - What Possible Implications - What Of The Future of Religious Education?

THE CHAMPAIGN DECISION

The United States Supreme Court decided the McCollum case on March 8, 1948. This case, People of the State of Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, arose when McCollum challenged the legality of the Champaign (Illinois) plan of released time whereby religious teachers employed by the Champaign Council on Religious Education went to public-school buildings for one period a week to give instruction in religion. For this period of religious education, pupils were grouped according to the faith (Protestant, Catholic, or Jewish) indicated by their parents on cards distributed by the school authorities. The cards were supplied by the Council on Religious Education. Children who did not attend religious classes went to study halls or were otherwise occupied with regular school work.

The United States Supreme Court held that the Champaign plan of religious education is unconstitutional and it granted McCollum's petition that the Board of education be ordered to "adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District Number 71, ... and in all public school houses and buildings in said district when occupied by public schools."

The decision was announced in four opinions: the official opinion of the Court, two concurring opinions written by five justices, and one dissenting opinion written by Mr. Justice Reed. The decision was therefore eight to one against the Champaign school-board, although one of the concurring opinions included certain reservations.

The Court's Opinion

The gist of the Court's official opinion may be found in two quotations:

> The foregoing facts ... show the use of tax-supppрted property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects.

Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment. ...
/Underscoring added./

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Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State.

Thus, the Court's official opinion seems to rest not only on the fact that the Champaign public-school buildings were used for religious education but also upon the schoolboard's cooperation in the program and the fact that compulsory attendance was used to help sectarian instruction.

Application of the Opinion

The question naturally arises in the minds of school administrators and parents as to the effect of this decision upon released-time programs in general. It must be pointed out that "released time" as an abstraction cannot be considered by any court. A court decides an issue only on the basis of the facts of the case before it. Therefore theoretically, the Court in the McCollum case has clearly invalidated only those released-time plans essentially similar to that operated in Champaign. The statement of the official opinion was short and without detailed reasoning.

OUR PUBLIC RELATIONS COMMITTEE BRIEF

The Baptist Joint Conference Committee on Public Relations filed a brief in this case, quite independently of McCollum. In our brief we did not attempt to do more than deal with the arrangement in force at Champaign. It is true, our attorney, Mr. E. Hill Jackson, did not seek to evade possible application to the use of the public school's released time in outside buildings, as nearby churches. But our contention was directed against formal religious instruction in public school buildings on the public school's own time by church-appointed teachers. We were, therefore, quite gratified when the Court's decision was announced. The Executive Secretary expressed his pleasure in the following words, widely printed in the press of the Nation:

I think the decision does the following:

1. It serves as the greatest single safeguard to separation of church and state outside the First Amendment itself.

2. It is a positive protection against the menace of sectarianism in our public school system, hence it is insurance of religious liberty and mutual goodwill among the sects.

3. It is a direct service to the home and church, the divinely appointed agencies for proper religious instruction, in that their responsibility is challenged to provide something vastly superior to the weak substitute attempted on released time under the framework of the compulsory school law.

The practice of giving religious instructions to pupils of the public schools ... while they are within the jurisdiction of the public school authorities ... under the compulsory attendance law ... in school buildings, churches or other buildings ... by teachers appointed by church organizations ... using teaching materials prepared by church organizations ... while the regular school teachers abdicate their teaching function with respect to those pupils whose parents have consented to their children's participation in the religious instruction--this practice is now declared by the Supreme Court to be unconstitutional.

WHAT OTHER IMPLICATIONS?

Upon the publication of the Court's decision, Protestants And Other Americans nited For Separation of Church and State issued a statement. Saying the organization ad come into existence after the case was submitted, it deemed it inappropriate to proclaim its convictions while the case was pending, but now that the Court has spoken, it ished to say that its position is in complete accord with the ruling. The statement ead:

Certain aspects of the decision may need further clarification, but on the main issue the intention and reasoning of the Court are clear. The decision can, in our judgment, be stated in one full sentence, as follows:

The practice of giving religious instructions to pupils of the public schools ... while they are within the jurisdiction of the public school authorities ... under the compulsory attendance law ... in school buildings, churches or other buildings ... by teachers appointed by church organizations ... while the regular school teachers abdicate their teaching function with respect to those pupils whose parents have consented to their children's participation in the religious instruction--this practice is now declared by the Supreme Court to be unconstitutional.

It is not just the use of school buildings for religious instruction that the Court's decision turns upon. This is marginal. The central question is not, where do the classes meet, but, under whose jurisdiction are they while receiving the church provided religious instruction? The answer is that they are under the jurisdiction of the State, that is, the public school authorities. This is the crux of the issue, according to the Court's ruling.

In effect, the churches utilize both the taxing power of the state and the compulsory attendance law to inculcate their particular religious doctrines and attitudes. State and church are thus woven together in their institutional functioning. While the pupils are "in school", the churches do the teaching. To thus interlock the functions of the church with the legal and tax supported functions of the public schools is a use of the civil law and the taxing power of the state for the establishment of religion, which the Constitution forbids. It is a union of church and state at that point.

We believe the actual results of the released time device are not substantial enough to justify the zeal with which it has been promoted, or the regret with which its nullification may be received. There are certain social bad effects that flow from the practice of dividing school children according to their parents' religious faith and marching them to separate school rooms or church buildings. Such a dramatization of creedal or racial differences tends to freeze sectarianism and to undo the democratizing influence of the public

schools. Protestants should not have allowed the Jews to stand alone in sensing this evil effect.

NATIONAL EDUCATION ASSOCIATION INTERPRETATION

In regard to whether or not the Court's decision applied to other forms of "released time" from the public school for religious instruction the National Education Association advised its nearly one million members as follows:

> The opinion was so general that it might be said to apply to "released time" in almost any form, if, as Mr. Justice Reed questioned in his dissent, the purpose behind such a plan is unconstitutional. It was because of the generality of the official opinion that Mr. Justice Jackson felt called upon to write a separate opinion in which he reasoned that the decision, although he agreed with it, was too broadly stated; and four justices, who also agreed with the decision, wrote a separate opinion in order to state certain particulars which in effect limited the broad scope of the official opinion.
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> The four justices (Frankfurter, Jackson, Rutledge, and Burton) who wrote the separate concurring opinion raised a question, apparently ignored in the Court's official opinion, concerning the different kinds of released-time programs. They recognized that there are many different arrangements which are "lumped together" as released-time plans. They said:
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> "We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time', present situations differing in aspects that may well be constitutionally crucial. Different forms which 'released time' has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program."
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> However, as another point in this opinion the four justices seem to point out three characteristics of the Champaign plan which would invalidate other similar in these respects:
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> "Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. ... As a result, the school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the consciousness of religious differences at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of the history of even this country records some dark pages. [Underscoring added.]
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> In evaluating the Court's decision in the McCollum case with respect to other types of released-time programs, we must therefore take into consideration these comments by the justices who agreed with the decision but wrote separate opinions. It is necessary to look into systematic types of religious education as related to the public schools to determine, if possible, which may

and which may not be effected by this decision. In general it may be said that the greater the dissimilarity between any particular program of religious education and the Champaign plan, the more debatable is the application of the McCollum decision.

Variations in Released-Time Programs

Continuing the National Education Association points out:

Type 1: Arrangements (exemplified by the Champaign plan) in which the school system not only releases the pupils from the regular school curriculum but provides housing, other facilities, and services for the religious education classes. This type of plan is definitely unconstitutional under the McCollum decision.

Type 2: Where religious education is conducted off school premises, but with the active cooperation of the school administration, not only in releasing pupils from the regular school curriculum and in keeping attendance records, but also by exerting a direct influence upon attendance at the religious classes. This type of plan also is unconstitutional under the McCollum decision.

Type 3: Where religious education is conducted off school premises, but with no more cooperation by the school administration than the releasing of pupils for religious instruction on school time. This type of plan seems to be unconstitutional also under the McCollum decision.

Type 4: Voluntary attendance programs of religious instruction organized in some communities where the schoolboard has authority under state law to dismiss school early. Such "dismissed time" plans, usually one day per week, probably fall in the "unexceptionable" types indirectly sanctioned by the separate opinion of four of the justices and, therefore, may be constitutional.

Type 5: Classes in religion held outside of school hours but in school buildings, when the school authorities do no more than to permit the buildings to be used for religious education. A plan of this type may possibly be unconstitutional under the McCollum decision, since it is the use of tax-supported property for sectarian education.

Further Applications

Typical opening exercises, the reading of the Bible, and repeating the Lord's Prayer are not directly affected by the decision in the McCollum case. There is only a possible <u>indirect</u> application which was pointed out by Mr. Justice Jackson in his concurring opinion where he stated that, although he agreed with the decision, he felt it was too broadly expressed. He based his contention upon the fact that McCollum, in her complaint, had objected to the use of the Bible and the Lord's Prayer. He said that the Court by instructing the Illinois Supreme Court in such general terms to order the schoolboard to desist from religious instruction and to grant McCollum's petition, accepted the complaint in these details as well as in the specific application to the Champaign released-time plan. If this legalistic theory is correct, there may be some foundation for extending the scope of the McCollum decision to Bible-reading and morning exercises in the public schools. However, the decision does not disqualify these activities.

The usual curriculum materials and instruction with respect to religious developments in history, art, and music, emphasis upon spiritual values in teaching, courses in ethics and morals are not effected by the Court's decision.

In our opinion, this decision of the Supreme Court in no way voids the responsibility of the public schools to inculcate those moral and ethical principles which are the essence of the good life. One of the important objectives of public education has been, and always will be, to inspire in youth a deep appreciation for the basic spiritual and religious values which give meaning to existence, provide the foundations of good character, and are guides to a high order of human conduct.

E. HILTON JACKSON'S CONSTRUCTION

Mr. Jackson, the eminent constitutional lawyer who prepared the Baptist brief in the Supreme Court in the McCollum case, offers the following answer to questions which have been raised:

In the light of the Supreme Court's interpretation of the First Amendment and the clear exposition of the significance of the expression "law respecting an establishment of religion" it is not too difficult to formulate a test of when there is or is not a true "separation of church and state"; nor is it an insuperable task to apply such test to any given case.

What the Constitution of the United States forbids and what the constitutions of all the states forbid though in different forms of expression, is the making of any law or the action of any governmental authority in pursuance of any law that involves the interlocking of the official functions of the state (or any of its agencies) with the official or institutional functions of any church.

When a state acting through its legislature invites or employs a minister of the Gospel to deliver an invocation at the opening of sessions of the legislature, it is dealing with individuals qualified in its judgment to perform the services asked for; it is not dealing with any church as an institution or establishment; it is not making any contract, agreement or arrangement with any Catholic, Protestant or Jewish body in performance of its official religious functions; it is not giving a veto or vote or even any part to any institution outside the institution of government; nor is it giving such participation to any group, organization or association of church bodies, national, state or local.

So when the officials in charge of the activities of the armed forces select certain members of such forces to act as Chaplains, they are not making any agreement with any church organization or group of organizations.

So also when the state exempts from taxation all property used for charitable, cultural or religious purposes, it is not participating in the official functions of any institution or group of institutions or giving any one outside the government a "say so" in the affairs of government. No Catholic, Protestant or Jewish organized group is thereby given a voice in the affairs of government. Equally fallacious is the hint that the absolute separation of church and state might in some way prevent our putting the words "In God We Trust" on the coins of the United States.

OPINION OF AMERICAN JEWISH CONGRESS

The legal adviser of the American Jewish Congress, Mr. Leo Pfeffer, has offered the following opinion as to the application to New York's plan (Number 2, above):

Mr. Justice Black, writing for six of the nine justices, was very careful to use language which could not reasonably be construed as limited to the Champaign system. Of course, the New York system was not before the court, and he therefore could not expressly invalidate that system. He did, however, use language sufficiently broad to include the New York plan: "The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax established public school system to aid religious groups to spread their faith. And it falls squarely within the ban of the First Amendment...."

The final paragraph of the court's opinion states the crux of the matter: "Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The state also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of church and state.

It is true that Mr. Justice Frankfurter's concurring opinion, signed also by Justices Jackson, Rutledge and Burton, contains one sentence which might be construed as limiting the judgment to the Champaign plan: "We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time" present situations differing in aspects that might well be constitutionally crucial."

But, as Mr. Justice Reed, the lone dissenter, shows clearly, the entire tenor of both opinions requires a determination "that any use of a pupil's school time whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban."

The Supreme Court was fully familiar with the operation of the New York system off the school premises. A brief filed by Charles H. Tuttle on behalf of the Protestant Council of the City of New York set forth in detail the operation of the system. It is discussed in equal detail in Mr. Justice Reed's dissent. With full knowledge of all the relevant facts, the court clearly indicated its opinion that the system violates the American tradition of separation of church and state as incorporated in the First and Fourteenth Amendments, and held, as Mr. Justice Reed stated, that under the "court's judgment ... children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education.

HORACE MANN LEAGUE ON RELIGIOUS EFFECT

Justice Black, in the majority opinion, drew largely on the views of both sides in the New Jersey bus case of a year ago. It was ruled that "No tax in any amount, large or small, can be levied to support any religious activities or institutions. ... Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organization or groups and vice versa."

Black went on to say that this did not show any government hostility toward religion or religious teaching. Such a hostility, he declared, would be at war with our national tradition. Rather, said Black, the majority was preserving the free exercise of religion that was guaranteed by the First Amendment.

Justice Frankfurter gave a broad outline of the place of religious teaching in public schools. He recalled that 100 years ago the states were torn by fierce disputes over religious teaching in the schools - which were then getting their start in this country. He pointed out that many public schoolmen - themselves devoted churchgoers - such as Horace Mann, President Grant, Jeremiah Black, and Elihu Root, agreed that the schools must never be given over to the use of any religious group. "We renew our conviction", Frankfurter said in closing, "that we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion."

WHAT OF THE FUTURE OF RELIGIOUS EDUCATION?

The released time practice has been promoted under the motivation of a noble idea. It is the idea that religion rightly belongs in the general educational process. It represents a deep concern for the secularization of our culture. This is due, not wholly but in great measure, to the taboo on religion in the public school curriculum. But tampering with the principle of separation of church and state in the effort to correct this by the device of released time is no longer defensible.

The idea behind released time must not be dropped. While the Court excluded church instruction as a part of the public school curriculum, the Constitution does not prohibit the study of religion. The essence of the condemned practice is the teaching of religion by the churches in the public school. The obstruction to the study of religion is not in the Constitution. It only forbids inculcation of personal faith by sectarian agencies. Serious efforts are now being made by leading educators to find a way to include religion in the process of public education. The search for such a solution of the problem will be greatly speeded up by the Court's decision. Protestants and Other Americans United For Separation of Church and State accepts the challenge in the present crisis and proposes to enlist the best thought of educators and church leaders in seeking a sound solution. It is our judgment that whatever may be done in the schools will not in itself be sufficient. Something else must be our chief reliance.

That something else is a nationwide drive to reconstitute the home as a place of religious nurture and a revival of concern among our churches to fulfil their God-given task of religious instruction. Free religion in free America is already vastly more vital and dynamic than in established church lands where the schools have just what we have put out by this Court decision. We have abundant resources, if tapped, to meet the need.

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