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NEA NEWS

NATIONAL EDUCATION ASSOCIATION, 1201 SIXTEENTH STREET, NORTHWEST, WASHINGTON 6, D. C.

VOLUME 2, NUMBER 5 MARCH 19, 1948

United States Supreme Court Bans Released-Time Classes

The following statement was prepared by the NEA Research Division to answer questions raised by the US Supreme Court decision of March 8 concerning the McCollum case:

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 [Ill.] 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 schoolboard, altho 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-supported 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.]

"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 thru 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.

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.

—WILLARD E. GIVENS, Executive Secretary of the National Education Association.

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.

In fact, 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. Mr. Justice Reed said in his dissenting opinion that aid to religious sects which the

other eight justices saw in the Champaign released-time plan was only a "byproduct of organized society" and was not to be condemned, in his opinion, any more than the long-established practices connecting religion with government [e.g., chaplains in the armed forces and in Congress]. Therefore, to him, the Champaign released-time plan was not 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, altho 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.

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:

"We do not consider, as indeed we could not, school programs not before us which, tho 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."

However, at another point in this opinion the four justices seem to point out three characteristics of the Champaign plan which would invalidate others similar in these respects:

"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 public 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 which the history of even this country records some dark pages." [Underscoring added.]

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 affected 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

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 school-board 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.

SUPREME COURT OF THE UNITED STATES

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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.

Typical opening exercises, the reading of the Bible, and repeating the Lord's Prayer are not directly affected by the decision in McCollum case. There is only a possible indirect application which was pointed out by Mr. Justice Jackson in his concurring opinion where he stated that, altho 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 affected by the Court's decision.

PARTIAL TEXT OF THE COURT'S OPINION

Following is the concluding portion of the opinion of the Court delivered by Mr. Justice Black:

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 [made applicable to the States by the Fourteenth] as we interpreted it in Everson V. Board of Education, 330 U. S. 1. There we said:

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against the establishment of religion by law was intended to erect 'a wall of separation between church and State.' . . ."

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments, if we adhere to the views expressed [in the Everson case], counsel for the respondents [the Champaign schoolboard] challenge those views as dicta and urge that we reconsider and repudiate them.

They argue that historically the First Amendment was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions. In addition they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the "establishment-of-religion" clause of the First Amendment applicable as a prohibition against the states.

After giving full consideration to the arguments presented we are unable to accept either of these contentions.

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public-school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings.

A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion.

For the First Amendment rests upon the promise that both religion and government can best work to achieve their lofty aims if each is left free of the other within its respective sphere. Or, as we said in the Everson case, the First Amendment has erected a wall between church and state which must be kept high and impregnable.

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 thru use of the state's compulsory public-school machinery. This is not separation of church and state.

WILLIAM O. DOUGLAS

FRANK MURPHY

ROBERT H. JACKSON

WILEY RUTLEDGE

HAROLD H. BURTON

NEA Institute To Emphasize Professional Leadership

FROM every part of our country, leaders will gather in Washington this summer at the NEA Institute of Organization Leadership. Here is an exceptional opportunity. This Institute will follow the general plan which proved so successful in 1946 and 1947. Here are the highlights:

For what purpose? To equip officers to give dynamic leadership in keeping with the Victory Action Program of our united education associations.

Under whose auspices? The American University and the National Education Association.

Under whose direction? Under the general chairmanship of the editor of the *NEA Journal* and of President Paul F. Douglass of The American University. Under the immediate direction of Ruth Coyner Little, assistant editor of the *NEA Journal*, director of the Institute.

How long? Four weeks.

When? Monday, July 26 thru Friday, August 20.

Where? The American University, Washington, D. C.

What will be the content of the course? Public speaking; journalism and public relations; parliamentary law; history, structure, and program of our professional associations; individual planning for 1948-49 by each member.

Who will teach? Special teachers, members of the NEA staff, and other national leaders.

Who is eligible to attend? Officers of state associations, all-inclusive locals, classroom-teacher locals, FTA sponsors, editors, and others who wish to prepare themselves for leadership. Advisers will be provided for each group.

How much will it cost? Room, tuition, and books, $80; meals may be taken in the university dining room at an approximate cost of $50. Local and state associations often pay part or all of the expenses of one or more of their officers.

Is credit granted? Yes. Four hours of graduate or undergraduate credit if desired.

Will housing be available? Yes. In the residence halls of The American University.

Is attendance limited? Yes. It is desired to have every state represented by one or more persons, with a total of not over 100 students.

Will there be time for sightseeing? Yes. The Capitol, Library of Congress, White House, Smithsonian, Mt. Vernon, Lee Mansion, FBI, Supreme Court, Lincoln Memorial, Jefferson Memorial are among historic places available.

Who came last year? Leaders from 37 states, and Washington, D. C., Canada, Hawaii, and Puerto Rico, including teachers, principals, superintendents, and college professors.

What was the response last year? "A wonderful experience." "Most helpful course I ever took." "It's great to know NEA headquarters firsthand." "Gave me confidence as an officer." "We plan to send our president every year."

How do I enroll? WRITE AT ONCE to Editor, *NEA Journal*, 1201 16th St., N.W., Washington 6, D. C.

Typical Reactions to the Institute

THE Institute has helped me greatly in organization work. I speak with more confidence because of the facts, materials, experiences, and skills that came to me thru the Institute.—RUTH ARMSTRONG, *president, Arkansas Classroom Teachers Association, Fort Smith.*

I AM particularly thankful for the excellent training and technics that I received at the Institute.—H. C. WEINLICK, *locals consultant, Wisconsin Education Association.*

THE Institute has enabled me to revitalize our local association. It was of great value.—MARY E. DOHERTY, *president, Cheshire Education Association, Hamden, Conn.*

THE Institute was of special assistance to me in my work in public relations. Even more important has been the understanding of the many services which the NEA gives to the teachers of our nation. —KENETH G. YOUNG, *superintendent of schools, Moro, Oreg., and vicepresident, NEA.*

MANY STATES ACHIEVE GOAL

As of Feb. 28, 13 states and Alaska have already achieved the Victory Action Program Goal for 1948: Alabama, Arizona, Arkansas, Idaho, Maryland, Montana, Nevada, Oregon, South Carolina, Tennessee, Virginia, Washington, West Virginia. Many other states will reach the goal before the end of the year.

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When Will We Wake Up And Outlaw Communism?

Congressman C. Jasper Bell of Missouri is deeply concerned about the communistic indoctrination going on in many of the schools. He knows, as we do, that it is not the great body of American teachers who are responsible but that the Comintern has perhaps secretly and quietly subsidized many professors and teachers in our universities.

He feels that teachers should be glad to have the disloyal ones rooted out. A number of Communist schools operating as such have been ferreted out by the un-American Activities Committee. Congressman Bell has reprinted in the *Record* an article by Frederick Woltman which appeared in the *Washington Daily News* of February 16, 1948. The article reads:—

NEW COMMIE FRONT TO ASK MARXIST SCHOOLS BE CLEARED

By Frederick Woltman

NEW YORK, February 16.—A new Nation-wide Communist front is being hatched. It will be called a Statement of American Educators.

President Truman and Attorney General Tom Clark within a few weeks will receive an appeal to remove from the Government's list of subversive organizations the 11 so-called Marxist schools which the Justice Department found to be adjuncts of the Communist Party.

The plea will be in the form of an open letter with a statement bearing the names of professors and administrators from universities throughout the country.

The statement will speak in lofty terms of "academic freedom" and "our national ideal of freedom of thought."

But the catch is this: The whole deal has been cooked up by the Communist schools themselves.

As bait, the names of 12 professors are affixed to letters now making the academic rounds collecting signatures to the Statement of American Educators. Replies are to be addressed to Prof. Lyman R. Bradley, Five Hundred and Seventy-five, Avenue of the Americas, New York 11, N. Y.

Omitted from the letter is the fact that No. 575 is the headquarters of the Jefferson School, chief of the Communist Party's training schools listed in the Clark report. Omitted also is the fact that Professor Bradley, New York University, is chairman of the board of trustees of the Jefferson School.

Nor is this mentioned: Three more of the twelve are trustees of the Jefferson School—Prof. Dorothy Brewster, Columbia; Prof. Margaret Schlauch, NYU; and Prof. Dirk J. Struik, Massachusetts Institute of Technology. One is a former trustee—Prof. Walter Rautenstrauch, Columbia—and one is an instructor there—Philip S. Roner, who was dismissed from City College in 1941 as a secret member of the Communist Party.

A seventh professor of the 12—F. O. Matthiessen, Harvard—is trustee of the Samuel Adams School in Boston, another of those cited as Communist.

The letter signed by the 12 professors is addressed "Dear Colleague."

"As educators," it begins, "we are perhaps more sensitive than some of our fellow Americans to the social and political implication of events and actions taking place today. We could not call ourselves responsible members of the teaching profession were this not so."

Then it asks for their signature to the prepared statement.

Citing the Jefferson school as an example, the statement holds that the 11 schools are victimized by "thought control" and "thought police" simply because they are teaching the philosophy of Marxism.

There is no hint that the Jefferson School was set up by the Communist Party; that it teaches, not theoretical Marxism, but revolutionary Stalinist-Marxism.

According to the prepared statement, "The right to study Marxism" is being "denied by arbitrary Government fiat." The fact is that no one has even suggested closing down these schools. They were included in the Clark subversive list as a guide for helping Government agencies determine whether any of their employes are Communists.

One of the signers of the come-on letter is Prof. Colston E. Warne (Amherst), who last November resigned a Federal job in protest against President Truman's loyalty check.

The program outlined indicates the daily increasing brazenness of the Communist attacks on America. For any teacher to join that attack by teaching Marxism in our schools would clearly indicate that teacher was a traitor in our midst.

It is my hope that the floodlight of truth and revelation of these nefarious enterprises will continue to be made through our daily press, by the Congress, the administration, and by right-thinking people everywhere in the United States.

Heart of Supreme Court Decision "McCollum vs. Board of Education"

(Extracts from the decision. Emphasis added.)

"In 1940 interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend; they were held weekly, thirty minutes for the lower grades, forty-five minutes for the higher.

The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools. The classes were taught in three separate religious groups by Protestant teachers, Catholic priests, and a Jewish rabbi, although for the past several years there have apparently been no classes instructed in the Jewish religion.

"Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; *they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies.* On the other hand, students who were released from secular duty for the religious instructions were required to be present at the

religious classes. Reports of their presence or absence were to be made to their secular teachers.

"The foregoing facts, without reference to others that appear in the record, *show the use of tax-supported 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 (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, 330 U. S. L. There we said:

" 'Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.

" 'No person can be punished for entertaining or for professing religious beliefs or disbeliefs, for church attendance or nonattendance. *No tax in any amount, large or small, can be levied to support any religious activities of institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa.*

" 'In the words of Jefferson, the clause against establishment of religion by law was intended to erect *"a wall of separation* between church and State".' Id. at 15-16. The majority in the Everson case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

* * *

"To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings.

"A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.

"Or, as we said in the Everson case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

"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."

A Fine Example of Eliminating Juvenile Delinquency

In the Southwest section of Washington the teen-agers have their recreation requirements fulfilled in a happy way. No longer do they have to go to the poolrooms or fool with slot machines or pinball games to have fun.

Principal Hugh A. Smith of Jefferson Junior High School (7th and 8th grades white) is responsible for this planned recreation and declares that not a Jefferson Junior High School boy or girl is now in trouble with the Juvenile Court.

Here is a typical program as given to the *Daily News.*

"Monday night, movies, games for older boys and girls; Wednesday night, games for 6 to 10-year-olds; Friday night, canteen for 300 teen-agers, with orchestra and refreshments furnished by P-TA; this is supplemented by programs in settlement houses, Boy and Girl Scout troops and DAR home-making groups."

This program was given out at an institute considering recreation for Washington. Reports were also made of Boy Scout groups, Settlement houses and especially the Boys' club which flourishes in Washington. This last group has a million dollar investment and is one of the best in the country. There are about 300 in the United States. These are for *underprivileged* boys. *Their club houses furnish every type of recreation and handicraft as well as reading rooms.* The pity is that no like club is given for little girls.

Our contention has been for some time that city public school auditoriums (and playgrounds especially) should be open for longer hours in the evening. Playgrounds as well as handicraft classes fulfill the normal activity, interest and the desire of children to make things themselves. With the constant growth of the apartment houses which give ever smaller space to children and the small city lots around the private homes, children can hardly move without getting into somebody's way or in trouble. We welcome this sensible approach to curbing juvenile delinquency.

FRIENDS OF THE PUBLIC SCHOOLS OF AMERICA
702 ALBEE BUILDING
WASHINGTON 5, D. C.

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