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July 9, 1948

THIS IS FOR YOUR INFORMATION

TO ALL FRIENDS OF WEEKDAY RELIGIOUS EDUCATION

Dear Co-Worker:

I take pleasure in passing on to you a copy of an editorial which appeared in the June issue of the JOURNAL OF THE AMERICAN BAR ASSOCIATION. Already it has been reprinted in many other periodicals and through the courtesy of the International Council of Religious education, permission was given for its re-publication in this form.

I suggest that you take time to read and study this editorial. I think it is quite significant that the AMERICAN BAR ASSOCIATION has expressed on behalf of the legal profession some of the basic concerns which we have expressed regarding the implications of the McCollum Case.

As your people continue to study the implications of the McCollum case, please keep in mind that certain Justices of the Supreme Court stated plainly that the Supreme Court had not passed upon the legality of systems of Weekday Religious Education which had not been before them. The language is as follows:

> "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 . . . We do not attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. . ."

As we have pointed out in previous communications, the Virginia system of Weekday Religious Education is "DIVORCED FROM THE TYPE OF SCHOOL SUPERVISION CRITICIZED IN THE CHAMPAIGN CASE". The Virginia plan is different in a number of ways from the Champaign plan. It is because of these basic differences that in most of the counties and cities of Virginia, the leaders of the Movement are planning to continue the work during the next school session.

If the courts ever pass judgment on the Virginia plan and declare it to be unconstitutional, the friends of this Movement will be among the first to abandon the plan and seek for other ways to provide Christian nurture for Virginia's children.

Sincerely,

Minor C. Miller

Minor C. Miller
Director

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Enc.

International Council of Religious Education
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"NO LAW BUT OUR OWN PREPOSSESSION?"

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Following is a copy of an editorial which appeared in the June, 1948 issue of the American Bar Association Journal. It should be encouraging to those who are concerned regarding the implications of the recent Supreme Court decision in the McCollum case to have this expression of judgment from the official publication of the American Bar Association, which has kindly permitted its reproduction in this form.

This statement should be encouraging to those who do not share the interpretation of the recent Supreme Court decision which was given in an editorial in the June 16th issue of the Christian Century which appeared almost simultaneously.

* * *

"In our May issue we commented on what appears to be a tendency in the Supreme Court to invalidate under the First and Fourteenth Amendments State Laws and State law enforcement measures which have worked well in the States for many years and have long been upheld, as valid under the same constitutional provisions, by the highest Courts of law in the States ('Striking Down State Laws,' 34 A.B.A.J. 390). We here comment on another propensity, instanced by the decision in Illinois ex rel McCollum v Board of Education ('the Champaign County School Case'), decided on March 8 and reported in our Review of Recent Supreme Court Decisions (34 A.B.A.J. 318; April 1948), to invalidate and proscribe local and State 'practices embedded in our society by many years of experience,' not expressly contained in State statutes although carried on under their authority and expressly upheld by the State Courts as valid under the constitutional provisions now held to outlaw them.

"In the McCollum case, Mr. Justice Jackson, who concurred with the eight-to-one majority in reversing the Supreme Court of Illinois (396 Ill. 14), wrote that

> 'It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions.'

"He avowed that 'We should place some bounds on the demands for interference with local schools that we are empowered or willing to entertain,' and Mr. Justice Reed, who along dissented, warned that

> 'This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A State is entitled to have great leeway in its legislation when dealing with the important social problems of its population. A definite violation of legislative limits must be established . . . Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people.'

"The McCollum case may be one of those fateful decisions which is ignored at the time and regretted in the future. It deserves thorough consideration now, The people should have the assistance of lawyers in coming to an understanding of its effect and implications. The latent consequences of the ruling could hardly be over-emphasized. It is a pronouncement by our Supreme Court on a fundamental principle, not only of national policy but of our civilization and way of life. THE JOURNAL wishes to assist in annalyzing the case and, to the extent of available space, invites a discussion of its import.

"Statutes of the State of Illinois were involved to the extent that its compulsory education law required attendance at schools within specified ages and gave to district boards of education supervisory powers over the use of public school buildings. What was done and permitted by the Champaign board, in agreement with accredited representatives of the different religious faiths, was held to violate the First Amendment, extended by the Fourteenth Amendment to apply to State legislation. What the Courts were asked by the petitioner-appellant to do was not an invalidating of any State law but the granting of a writ of mandamus telling the local school board what it should and should not do.

"Interested members of the Jewish, Roman Catholic, and Protestant faiths in the school district had 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. Classes were made up of pupils whose parents had signed printed cards asking that their children be permitted to attend. Such classes met once a week in the regular school rooms of the school building. 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 separate groups by Protestant teachers, Catholic priests, and a Jewish rabbi. Students who did not choose to take the religious instruction went to some other room in the building to pursue their secular studies. Students present at any of the religious classes were released for that time from secular study. Accordingly, reports of their presence or absence at religious classes were made to secular teachers. No coercion, discrimination or favoritism for any one religious faith or sect was shown. The challenge was of any religious teaching at all on school property and during school - in the religious faith chosen by parents or pupils with freedom for any to stay away.

"The plaintiff, an avowed atheist, asked that the Court order the Board of Education to 'adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District No. 71 and in all public school houses and buildings in said District.' She asked the Court to ban 'every form of teaching which suggests or recognizes that there is a God.' She specified the proscribing of the teaching or reading of any parts of the Scriptures, including the Twenty-third Psalm. Two hundred years ago, a woman like Mrs. McCollum would have been persecuted as an infidel and heretic. Today she sought and obtained the aid of a judicial decree to suppress the teaching which was the very genesis of the freedom which she exercises for herself by trying to take it from others.

"The best available figures of the United States Office of Education and the National Education Association show that at least two million children were attending some kind of religious classes in 2200 cities, towns and communities a year ago, with the number at least 3000 this year and the number of children correspondingly increased. Nearly all children in public schools are present during reading of Scriptures of non-sectarian prayers. According to a survey reported by the United Press, Bible-reading in public schools is required by law in Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Maine, Massachusetts, New Jersey, Pennsylvania, Tennessee and the District of Columbia.

Another twenty-four states permit reading of the Bible and repeating of the Lord's prayer without comment.

"The extent of the Court's desruption of local practices and habits of the people in many States is shown by the NEA survey as reported by the United Press. 'Definitely unconstitutional' under the decision is any plan under which the school system releases pupils from regular school classes and provides classrooms and other services for the religious classes. Some school districts in at least eleven states conduct such programs: Alabama, Illinois, Louisiana, Michigan, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, and Virginia and Hawaii.

"Also 'unconstitutional' under the ruling is any plan where religious education is conducted off school premises but during school hours and with the active cooperation of the school administration, pupils being released from the regular school, and teachers and church authorities cooperating in keeping attendance records. Some schools in at least these thirty-four states have that type of a plan: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wisconsin, and Alaska and Hawaii. In New York State, this type of plan was upheld as constitutional by the Court of Appeals in a suit by an atheist (People ex rel. Lewis v Graves, 245 N.Y. 185), and later embodied in the State's education law (Section 3210 (1)).

"The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' The Fourteenth Amendment has been construed by the Court to extend to lawmaking by a State the prohibitions contained in the First Amendment. Looking at the matter in the light of our country's history as Mr. Justice Reed urged, it is difficult to see how the Constitution was violated by what the local community and school board in Champaign did. Did it constitute an 'establishment' of religion? Was not the 'free exercise' of religion denied by what the Court did, rather than by the State law? Mr. Justice Reed said that the Amendments 'do not bar every friendly gesture between church and State' and are not 'an absolute prohibition against every conceivable situation where the two may work together.' It has never been so in our history.

"James Madison wrote that 'he apprehended the meaning of the words to be, that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Thomas Jefferson, oft-quoted foe of giving governmental support to any one religious sect or faith to the exclusion of others, did not oppose the use of public funds in support of religious education along with other education. On the contrary, he recommended for his beloved University of Virginia a theological school for the training of clergymen, a large room for religious worship, an elaborate arrangement for students of the religious institutions which he proposed that the various denominations should set up in connection with the University - all at public expense! As President of the United States, Jefferson used public funds and government properties in aid of religion and religious education in various ways, as has every President to this day. Recognition of an interest in and support for religion of the recipient's choosing has not been regarded as an 'establishment', so long as no one faith is singled out, favored, or established to the exclusion of others.

"Sessions of the Senate and House of Representatives, under their historic rules, are opened always with a prayer, by Chaplains paid from public funds. Chapels are maintained on the government reservation at West Point and Annapolis; 'no cadet will be exempted from attendance.' Millions of dollars were spent in

erecting and maintaining chapels at army camps and bases during World War II; they were used interchangeably by clergymen of the different faiths. Chaplains went everywhere with the troops and on ships of war, and conducted services. Money of taxpayers and properties of government were used freely to see to it that our young men who went into the face of danger and death did not lack the ministrations of those who believed in God and the verities of religion. Must State and local governments do less for those who are being educated for citizenship and life?

"Under the 1944 legislation, a discharged veteran may be educated at public expense to be a clergyman, in a denominational school of his choice. A month after the decision in the McCollum case, the Congress passed and the President signed an appropriation of $500,000 to erect a chapel for religions at the United States Merchant Marine Academy at King's Point, New York. On May 28 the United States Post Office placed on sale a postage stamp bearing the legend: 'These Immortal Chaplains . . . Interfaith in Action.' It bears portraits of four young ministers of religion - a Methodist, a Roman Catholic priest, a Jewish rabbi, and a Baptist - and also a painting of a torpedoed troop-ship which carried them to their graves off Greenland on February 3, 1943 - the S. S. Dorchester of our Navy. They were on government property at taxpayers' expense, to hold religious services and give instruction and ministration in religion. And when they made their way to the deck of the stricken ship, they gave their life-jackets to four young men who had lost theirs in the confusion. Having given away their own chance to live, the four chaplains stood close together, holding hands, as the ship went under - an immortal demonstration of the unity of religious faiths and what religion does for people - now appropriately commemorated by our government. Was all this 'constitutionally'? Maybe there was something in the Dorchester incident which the majority in the Supreme Court missed - something to which the highest Courts of our States and countless local communities have held fast.

"The Constitution of the Soviet Union provides (Article 124):

> In order to insure to citizens freedom of conscience, the church in the USSR is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens.

"Fortunately, the framer of our Constitution did not go that far, and the institutions and practices of our people have not gone that far. Nothing in our Constitution commands that the First Amendment should now be interpreted as though it read like the above-quoted provision. Nothing in our Constitution commands that 'freedom of religion' shall be freedom from religion.

"Of course, the decision has a far deeper significance, in the philosophy of law and government and the role of the Court, than the interdiction of the arrangement worked out by the religious faiths with the school board in Champaign, Illinois. As Mr. Justice Jackson and Mr. Justice Reed solemnly warned, new and far more vexatious aspects will arise, in litigation which will seek to carry the present ruling to further extremes. The traditionally religious sanctions of our law, life and government, are challenged by a philosophy and a judicial propensity which deserves the careful thought and concern of lawyers and people. We shall discuss it soon in other aspects."

6-28-48
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