

Graduation Prayer: The Shifting Wall of Separation Between Church and State

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Heading into the final minutes of "Double Jeopardy," Alex reads the answer: "Robert E. Lee." Yesterday's champion rings in first and states, "Who was the General of the Northern Army of Virginia during the American Civil War?" Alex responds, "no, I'm sorry." The other contestant rings in and smugly answers, "What was the name of the famous 19th-century Mississippi River steamboat depicted in the musical *Showboat*?" Alex again replies, "no, sorry." With a rush of adrenaline, you ring in and proclaim, "Who was the Principal of Nathan Bishop Middle School in the school graduation prayer case?" Alex nods approvingly and you surge ahead of the other contestants, ready for glory in "Final Jeopardy."

Of course, you remember the case of *Lee v Weisman*, 505 US 577 (1992), a United States Supreme Court decision that held that the Establishment Clause forbids public school officials from including clergy who offer prayers as part of an official public school graduation ceremony. Principals of public middle and high schools in Providence, Rhode Island were permitted to invite members of the clergy to give invocations and benedictions at their schools' graduation ceremonies. Principal Robert E. Lee invited a rabbi to offer prayers at the middle school's graduation ceremony and gave the rabbi a pamphlet containing guidelines for the composition of public prayers at civic ceremonies. Lee advised the rabbi that the prayers should be nonsectarian.

Deborah Weisman and her father objected to the prayers and filed suit. The litigation eventually reached the United States Supreme Court, which relied on previous rulings to conclude that "the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'" The Court found that the "State's involvement" (through the principal) in arranging for the school prayers violated this guarantee. The Court described Principal Lee's in-

volvement, finding it "as troubling as it is undenied."

"A school official, the principal, decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur. The principal chose the religious participant, here a rabbi, and that choice is also attributable to the State."

"The State's role did not end with the decision to include a prayer and with the choice of a clergyman. Principal Lee provided Rabbi Gutterman with a copy of the 'Guidelines for Civic Occasions,' and advised him that his prayers should be nonsectarian. Through these means the principal directed and even controlled the content of the prayers."

Although the Court acknowledged that Principal Lee's directions for the content of the prayers were a "good-faith attempt" to ensure that sectarianism be removed from the graduation ceremony, this explanation did "not resolve the dilemma" caused by the school's participation in formulating any prayer.

"The question is not the good faith of the school in attempting to make the prayer acceptable to most persons, but the legitimacy of its undertaking that enterprise at all when the object is to produce a prayer to be used in a formal religious exercise which students, for all practical purposes, are obliged to attend."

Following the Lee decision, school principals (and their superintendents, boards, and legal counsel) looked at different approaches to implement a prayer at a school activity. One approach, adopted by the Santa Fe (Texas) School District, placed the decision with the student body. The District's policy stated:

"Upon the advice and direction of the high school principal, each spring, the high school student council shall con-

duct an election, by the high school student body, by secret ballot, to determine whether such a message or invocation will be a part of the pre-game ceremonies...."

Defending the lawsuit which followed, the District argued that the student led, student-initiated invocations before football games were "private student speech, not public speech." The Supreme Court disagreed and held that the District's policy was "impermissibly coercive" because some students faced the "difficult choice between attending these games or avoiding personally offensive religious rituals." *Santa Fe Indep Sch Dist v Doe*, 530 US 290 (2000).

Despite the Supreme Court's clear holdings in *Lee* and *Santa Fe*, the issue of prayer at public school activities has not abated. *See Adler v Duval Co Sch Bd*, 250 F3d 1330 (CA 11, 2001) (policy of permitting a graduating student to deliver an unrestricted message at graduation did not violate the Establishment Clause); *Deveney v Kanawha Co Bd of Ed*, 231 F Supp 2d 483 (SD WV, 2002) (senior class officer could not offer nonsectarian, nonproselytizing invocation at graduation); *Lassonde v Pleasanton Unified Sch Dist*, 320 F3d 979 (CA 9, 2003) (school officials did not violate student's First Amendment rights by prohibiting him from including religious proselytizing comments at his commencement speech); and *Doe v School Dist of the City of Norfolk*, No. 02-4135 (a school board member's recitation of the Lord's Prayer at his child's graduation ceremony did not violate the Establishment Clause because there was no evidence that school officials knew of his plans).

Undoubtedly, secondary school principals (and the courts) will continue to face challenges to the hotly-contested prayer issue. What other names will be added to the "Jeopardy" category of "Principals and the Supreme Court?"



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