

The events described here began in 1989, and yet the issues which the events illuminate continue to bewilder administrators more than 15 years after the issues were supposed to have been settled by the U.S. Supreme Court. In communities large and small school across America administrators are faced with the daunting ethical choice of following or ignoring court rulings which are contradictory to long-held values of the citizens which the principal serves.

This case study is offered as a means of studying the legal, leadership, ethical, and pragmatic issues which are in dynamic interaction and conflict when comparable events arise such as the approval of school clubs based on the sexual orientation of students.

Déjà Vu All Over Again

LET'S BOW OUR HEADS ILLEGAL, YET COMMON. On Monday, October 10, 2005 Mike Bolton, a Birmingham News staff sports reporter, wrote a column under that headline (Bolton, 2005). Mr. Bolton's article explored the examples of the continuing tradition of pre-game prayers before football games in Alabama many years after the Federal courts at every level ruled it clearly unconstitutional.

Court History

In 1996, acting on behalf of Michael Chandler and his son, Jesse, the ACLU of Alabama challenged a 1992 Alabama law permitting student-led prayer at student assemblies, graduation ceremonies and athletic contests and its enforcement in DeKalb County public schools (Long Awaited Victory, 2000). This suit ended with an injunction by Federal Judge Ira Dement prohibiting public pre-game prayers (*Chandler vs. James*, 1999).

In 2000, the U.S. Supreme court would seem to have settled the matter. The Santa Fe Independent School District, a Texas district located between Houston and Galveston, permitted students to read Christian prayers at graduation ceremonies and over the public address system at

home football games. These prayers were read by a student selected by the student body. Two sets of current or former students and their parents, one of whom was Mormon, the other Catholic, objected to the policy and filed a suit on the basis of a violation of the Establishment Clause. During the litigation, the school district changed the policy. Two elections would be held. The first would decide if prayers should be held during football games. The second decided the student to deliver them. The students elected in favor of prayer. The district court allowed this policy, though it required that they should be nonsectarian and non-proselytizing. Both the plaintiffs and the defendants appealed to the Fifth Circuit Court of Appeals. The Santa Fe Independent School District appealed claiming the words nonsectarian and non-proselytizing should not be necessary. The parents contended that the football prayers were unconstitutional altogether. The Fifth Circuit insisted that the words nonsectarian, non-proselytizing were constitutionally necessary in a policy governing prayer. It also decided that these student led prayers were only acceptable at graduation, not during football games. The U.S. Supreme Court heard the case focusing only on the issue of prayer at football games. The Court ruled that any policy permitting student led and initiated prayer before football games was a government endorsement of prayer, and, therefore, unconstitutional (*Santa Fe Independent School Dist. v. Doe*, 2000).

However, the state of Alabama appealed the decision of the Eleventh Circuit, and on June 26, 2000, the U.S. Supreme court granted certiorari on an appeal from the Eleventh Circuit and remanded *Chandler* to be reheard by the Eleventh Circuit Court in light of *Santa Fe v. Doe*. (*Chandler v. Siegelman*, 2000). On October 19, 2000, the Eleventh Circuit court upheld Judge Ira Dement's original injunction prohibiting student pre-game prayer and invalidating the Alabama statute which had permitted it (*Chandler v. Siegelman*, 2001). The state of Alabama

once again appealed the decision of the Eleventh Circuit Court and on June 18, 2001, the U.S. Supreme Court denied certiorari (*Chandler v. Siegelman*, 2001).

Prayer and Football in Alabama Today

Mr. Bolton's article explored a number of Alabama public high schools that continued having prayers recited over the public address system prior to football games despite the clear ruling of the Federal Courts. Bolton cited two illustrative examples: Curry High School in Jasper, a small coal and timber town with a population of just under 14,000 residents, and JB Pennington High School in Blountsville. Blountsville is a small town of under 2000 residents who reside some 50 miles northeast of Birmingham.

"We have student-led prayer before each of our home games," said Bobby Gann, principal of Curry High School. "It is not something that is done by the school. It is done by our students and we think that's OK. If a student wants to come to the press box and lead a prayer, we allow them to do so. We've never had anyone to complain" (Bolton, 2005). Principal Craig Sosebee told the *Birmingham News*, "A prayer before games is a long-standing tradition here. That's what people in our community want (Bolton, 2005). As one reads the comments of the principals quoted in Mr. Bolton's article, one must inevitably ask, what has changed? Why have good people ignored the law? What lessons can we draw from the present state of affairs?

The reflections that follow are as they are remembered today. They are written with a sense of good humor. The leader's actions during that turbulent time were controversial and, to many, contentious. People, whose friendships mattered, distanced themselves. A leader's faith was challenged as were professional philosophies, beliefs, and values. Ethics were on public display almost daily and often challenged by letters to the editor in the small daily newspaper.

Of Angel Wings and Hurricanes

In the spring of 1989, his fifth year as a principal, he had a visit from his band director who came by to talk about the halftime show being planning for the next football season's halftime shows and band competitions. The band director was a little concerned, he told the principal, since he was planning a show that featured several styles of "religious" music – gospel, spiritual, contemporary, and ending with *How Great Thou Art*. The principal told the band director that he thought there should be no problems since musical notes, in his opinion, could not be construed as being inherently religious under any circumstances. And so the director began preparing in earnest for the show.

Little did he know that the 11th Circuit Court was soon to decide a case that would test his credibility, mettle, and ethics as a principal in the small textile town of Alexander City. Alexander City was proud of its religious traditions and was equally proud of its Friday night high school football traditions.

When he arrived as principal in 1984, pre-game prayers over the public address system were the way good and proper football games were supposed to begin. The ministers who delivered the pre-game prayers usually prayed for safety of the players and a safe trip home for the fans. Sometimes they included a plea for the salvation of all the sinners in attendance. It must be noted that this did not seem unusual to the principal as he had never attended a football game that did not begin with a prayer.

In mid-summer of 1989, the court issued a ruling in a case which involved a band student, his father, west Georgia school district, and prayers before football games (*Jager v. Douglas County School District*, 1989) – a ruling that would bring the establishment clause home to the principal personally and test his understanding of the law. Remember that conversation with his band director? Well, the perfect storm was gathering force and headed squarely for the

principal. In *Jager*, the 11th Circuit had declared that pre-game prayers were clearly unconstitutional. *Jager* did not only involve football, but it also involved that third important tradition – marching band. Jager, the son, was a member of the marching band of Douglas County High School in Douglas, Georgia. Most bands, like football teams, had a pre-game prayer or a pre-halftime prayer asking for God’s blessing on their performance.

When the ruling came down that there were to be no public prayers of any kind before football games, winds began to rip at the fabric of several Friday night traditions. The state athletic association issued a model sportsmanship statement which could be read in place of the prayer. The mayor of Montgomery declared that no Federal Court was going to stop prayers before games in his city. To emphasize his point, he led the first prayer of the season at the 50-yard line at the city’s largest stadium. Every newspaper and television outlet in the area reported on his actions as both a news story and a sports story.

In Alexander City, which is only 45 miles from Montgomery, people were beginning to ask the principal what he was going to do. After meeting with his superintendent, both agreed that the school would discontinue the pre-game prayers. Typically as soon as the prayer ended the American flag would be raised as the band played and the crowd sang the national anthem. Instead, they would begin a new tradition of raising the flag as the crowd collectively said the pledge of allegiance. Surely, the principal thought, so much patriotism at one time was certain to cause people to forget that they did not ask for the Almighty’s blessing.

The first game was at Prattville High School, which is only a stone’s throw across the Alabama River from Montgomery. At the halftime of that first game the band performed to an enthusiastic Prattville crowd in the home stands. The principal had decided that he would watch the performance from his seat in the visitors’ stands. As always he observed a well rehearsed

performance. The only thing that piqued his curiosity was that the flag corps had donned angel wings for the finale of *How Great Thou Art*. In the vernacular of flag corps design, each girl had about two yards of filmy, iridescent cloth attached by elastic to their wrists and ankles.

Two days later as the principal attended Sunday services, he was quickly approached with the question, “Well, are we going to have a prayer before the game this week like at Prattville?” He answered with as much enthusiasm as he could rally, “No, we are going to say the pledge of allegiance in unison. Can’t you just hear how moving it will be to hear 4000 people say the pledge together?” His response was not greeted with enthusiasm, and he began to wonder if that twinge of worry about the angel wings on Friday night might be the hurricane winds of something more significant in his life as principal and community leader.

Monday mornings often present new challenges in high schools because one never really knows what aftershocks of weekend events will be brought to school. While there were no fights or teenage breakups to deal with, there were the aftershocks of his announcement that no prayers would be said before football games in Alexander City. About 9:30 on this Monday morning his secretary buzzed the principal to tell him that the ladies from the Faith Temple Women’s Prayer Circle were here to see him. The principal had no doubt that he had been the topic of a few fervent intercessory prayers that morning. The ladies wanted to know if there was any way that they could use the stadium public address system to deliver a prayer since the school was now out of the prayer business. The principal said, “No, that would be endorsing religion by the school and that was clearly ruled impermissible by the Supreme Court.”

The ladies asked if they could just have the microphone for one minute about an hour before the game. The principal explained that the Court had created a three-prong analysis known as the *Lemon Test* (*Lemon v. Kurtzman*, 1971) to assess the constitutionality of religion in

schools. He explained that the *Lemon Test* first required that the schools action have a non-religious purpose. Second, he explained that the school's actions could neither advance nor inhibit religion. Finally, he explained that the third prong required that the action not create an excessive entanglement between the school and religion. As politely as he could, he explained that allowing a prayer over the stadium public address system would fail all three parts of the *Lemon Test*. The ladies calmly and respectfully disagreed with the principal's assessment and then asked if after the national anthem they could hold up a large banner with the words, "LET US PRAY." Seeing a possible way out of this milieu, the principal enthusiastically explained, that the people in the crowd clearly have the right to pray whenever they decide.

Sure enough on the next Friday night as the last note of the national anthem had echoed into silence, the ladies raised a very large banner imploring the crowd to *Let Us Pray*, and the entire crowd recited the Lord's Prayer. The football team beat up on the visiting team pretty well in the first half, and so the crowd was really ready for the halftime show. The visitors performed first and did a commendable job. But the principal was anxious to see his band's show from the front and take another look at the angel wings. The crowd seemed more animated than usual and stayed in the stands rather than visiting the concession stands.

The Pride of Alexander City Marching Wildcats paraded onto the field to thunderous applause. They went through their nine-minute routine with precision and timing and came ultimately to the finale of *How Great Thou Art*. The principal waited with anticipation as their intricate patterns inevitably gathered them together at the 50 yard line for the march to the sidelines and the applause of a grateful crowd. As they marched and twirled and played with precision and enthusiasm, the principal began to feel the winds impending controversy gathering momentum, for before his eyes, the band was striding off the field in the form of a cross.

The principal stayed until the lights were out and drove slowly home knowing that he had to give his colleague, friend, and band director, a call to tell him that he had to change the show that they worked on all summer. The principal decided not to put it off, and so he called him that night, and told him the band could play *How Great Thou Art* but not while marching off the field in the form of a cross. The band director was very understanding, and said he would put in some geometric formations instead of the cross but would need to use the cross for at least one more week. Knowing the difficulty of putting in a completely new formation with thousands of new steps, the principal understandably agreed.

As the principal attended Sunday services, he clearly felt that the closeness that had characterized his relationship with many valued friends was simply not there on this day. As this scenario played out further, he was to find that the closeness would not be regained, and he realized first hand the law of unintended consequences.

As school started on Monday, it was clear that the principal was no longer good ol' "Doc" to the band members. Instead, he became the symbol of inappropriate adult power. During the week, the story played out in the local newspaper which to its credit tried to stay objective, but the letters to the editor were brutal.

Friday night finally arrived, and another home game. The LET US PRAY sign was raised with a few less people participating. As halftime approached, the principal had a sense of relief that perhaps the winds were diminishing with little lasting damage. The band performed in its usually stellar fashion. Inevitably they arrived at the formation of the cross. For the first two halftime shows the band had marched off the field as they played *How Great Thou Art*. So, the principal was a bit perplexed when, instead of marching, they stood still as a cross. No big deal.

He could handle this. As the final note echoed against the press box, the band in perfect and total synchronization kneeled as one in prayer.

To this point, the *Establishment Clause* has been the primary point of analysis. But there is one more chapter to this story. Monday morning arrived with a little crispness in the air signaling a change of the seasons, and, the principal hoped, of the tensions that had beset his school for four months. He arrived that morning at his usual 6:30; made coffee for staff; poured himself a cup, and began his daily rounds. As the principal began to encounter a few early students who were coming in for a before-school 7:00 AP Calculus class, he noticed that the leader of the trumpet section was wearing a white tee shirt with a black cross emblazoned on the back. As the remainder of the students began coming in about 7:30, about every fourth student (and every band member) was wearing a white tee shirt and with a black cross on the back.

As the day continued, the students seemed puzzled that the principal ignored the cross-emblazoned tee shirts where he had acted definitively about the cross formation on the field, and eventually a student asked him why he had not made them change their shirts. Not one to ignore a teachable moment, the principal explained the difference between *Lemon v. Kurtzman* and *Tinker v. Des Moines*.

Probing the Issues

Leadership is seldom about simple decisions. More often it is about decisions that seem to take on lives of their own, and find that whether one lives in small communities or large cities, school leaders' ethics are constantly on public display as a result of their actions. Leadership theory today, like the evening news, seems often to be composed of bite-sized platitudes. Leaders, on the other hand, must always struggle to consider the practical, pragmatic, rubber-meets-the-road consequences of their actions. Very often, the actions and the consequences are

the effects of events totally beyond the initial control of the leader. In that setting, platitudes are no substitute for understanding the nature of leadership on a profound level and demonstrating the courage of ethics and integrity.

The questions which follow are intended to help school leaders anticipate consequences three or four times removed from their initial actions and to reflect on the less tangible issues of beliefs, ethics, values, integrity, and courage.

There are number of ways the questions may be used. The leadership questions individually or collectively lend themselves to an extended response which might take the form of a small group discussion or a written analysis. The legal questions provide a rich opportunity for computer-based legal research and analysis. The questions with only slight adjustment would also provide a rich opportunity for discussion and analysis by high school government classes.

Leadership Issues

1. How do school leaders cope with laws that are contrary to community norms?

Although religion may be the best example, certainly free speech is a close cousin.

2. How do/should personal beliefs and values shape the actions of the leader?

Can a person act independently of deeply held beliefs?

3. How do leaders build respect and integrity in situations where their values, ideas, knowledge, and actions engender resentment from a community?

How might such community resentment affect staff perception?

4. How should a school leader respond to parents who want the school to pursue something that appears overtly religious?

5. Should issues such as this one be best handled at a district or school level?

What a leadership issues are involved at each level?

6. How might a leader respond if a member of the school board publicly supported the community rather than the school?
7. How might a school leader work cooperatively with the media in a situation such as this?
Should school leaders respond to negative “letters to the editor?”
What about editorials critical of the school or district?

Legal Issues

1. Can music without words ever raise questions of separation of church/state?
Can musical notes combined with enough elements – become inherently religious? For example, when the melody is well known so that even if words are not spoken, everyone knows what they are does this rise to a constitutional level of concern?
2. What would you do if someone made a banner that was antagonistic towards prayer? What are the legal issues involved?
Would it be a free speech problem if you allowed one banner but not the other?
3. When can public officials pray at public events?
The local ministerial association rents the school’s auditorium to sponsor Baccalaureate and asks you to participate. Can you legally? What are the leadership issues?

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