

CHAPTER ONE

Prayer at the Athletic Banquet

You are an attorney in the office of the University Legal Counsel. Your boss, the Legal Counsel, has just given you the following file. She requests that you prepare the written opinion that she will provide to President McBee. Prepare the opinion.

THE UNIVERSITY OF KATAHDIN

To: University Legal Counsel
From: President Susan McBee
Re: Request to Open Athletic Banquet with a Prayer

Dear Counselor:

I've got a tough one for you. During my weekly Presidential Open Hour I was visited by two student athletes who are part of the student advisory committee for next month's Athletic Banquet. They politely, but strongly, requested that the Banquet be opened with what they called a "nondenominational prayer." I'm a soil scientist by training, but I do know from various Presidential Conferences that this is a sensitive issue for a public university like UK. There is also a legal dimension to it. I explained this to the students and promised I would get them an answer as soon as possible.

I need your advice in writing on this one. If the law provides a clear answer, I'd like to be able to quote that to the students and to any others with an interest in the issue. If the law doesn't provide a clear answer (and I've been around long enough to know that is often the case), I need your guidance as to how I should exercise my choice.

I have high respect for the two students. They are both fine scholars and probably headed for graduate or professional school. I don't want to blow them off on this.

THE UNIVERSITY OF KATAHDIN

To: Gary Hamilton, Athletic Director
From: Carla Martinez, Athletic Department Development Director
Re: Athletic Banquet

At your request, I have gathered some information about our annual University of Katahdin Athletic Banquet.

Our records show that the Banquet began in 1937. Prior to that time, individual teams would hold end-of-season functions. The Banquet was not meant to stop such functions. Rather the goal was to give all supporters of UK Athletics a single celebratory event each year and to allow our student-athletes, particularly in “minor” sports, a chance for wider recognition than provided by just a team-only event.

The Banquet has grown over the years. In recent years, attendance has ranged from 1,000 to 1,200 students, faculty and staff, and community supporters of UK Athletics. The Banquet is held on campus at the Activity Center. For at least the past two decades, a nationally or internationally known sports personality has served as speaker and guest of honor. The great majority of student athletes attend the banquet at no cost. The normal program includes a social hour, dinner, presentation of awards, and several speeches leading to the main address by the guest of honor. One speech is the Athletic Director’s annual “State of UK Athletics” presentation.

At least since the early 1960s, the Banquet has served as an opportunity to reward and encourage private donors to UK Athletic Programs. In recent years, private donations to UK athletic programs have raised over \$5 million annually. The Banquet, which receives excellent print and electronic media coverage, allows the School to honor major donors. An annual award is presented to our Fan of the Year.

Planning for the Banquet is the responsibility of my office. It is a year-round affair and involves all of our staff as well as other campus employees. Although we are advised by both a Student Advisory Committee and a Booster Club Advisory Committee, responsibility for the Banquet remains in this

office. We have found the two Advisory Committees are a useful way to build enthusiasm for the event and to get the perspectives of student-athletes and community supporters and major donors.

Let me know if I have missed anything.

Prayer at the Athletic Banquet

5

E-mail message

To: Athletic Director Hamilton
From: Jeff Washington, Academic Counselor, UK Athletic
Department
Re: Prayer at the Athletic Banquet

You asked me to explore student-athlete sentiment about a request to begin the Athletic Banquet with a prayer. I know many of our student-athletes from my role in the academic counseling programs at UK. I talked to about a dozen student-athletes whom I know and respect about the issue. Most supported the idea of the prayer. A couple of international students, who I assume are not of the Christian faith, seemed confused or troubled about the request. I also talked to the two sports editors of the campus paper, the Daily Katahdin. Both were negative about the idea. They feared it might be divisive. They also said: "It sounds illegal to us. This is prayer in a public university."

Although I did not talk to them, I know the three students who serve on the Banquet Advisory Committee. All are outstanding students and leaders. Two are active members of the Coalition of Christian Athletes on campus. I respect their sincerity on this issue and hope we can do something for them and the majority of student-athletes who share their feelings. Don't let the ACLU liberal crazies scare you on this matter. They'd invite Osama to dinner if given half a chance.

Athletic Director Gary Hamilton
University of Katahdin

Dear Director Hamilton:

We serve as the Student Committee for the Athletic Banquet that will be held on May 4 of this year. We repeat the request we made informally to you that the Banquet be opened with a nondenominational prayer. Our conversations with our fellow student-athletes show us that this has strong support. For many of us, religious faith is an important part of our lives. Our athletic achievements are a reflection of our faiths. It seems highly appropriate to recognize that with a brief expression of appreciation to our Creator who guides and inspires us.

We are happy to work with you on this matter. Thank you.

Alicia Brooks, Co-Captain, Women's Swimming and Diving
Jeff Patterson, Captain, Men's Basketball
Shawn Jefferson, MVP, Men's Track and Field

Prayer at the Athletic Banquet

7

E-mail message

To: UK Legal Counsel
From: Attorney Mary Kowalski, UK Assistant Legal
Counsel
Re: Athletic Banquet Prayer

Dear Boss: At your request, I've done some quick research on this fascinating problem. It takes me back to my Con Law classes at UK Law. Here is what I find.

Nothing in Katahdin statute law or UK regulations addresses the issue. I also find no Katahdin Supreme Court opinion that is even close to being on point. Ditto for any lower federal court cases that would be binding in Katahdin. Thus, we draw our law exclusively from United States Supreme Court cases. I attach relevant extracts from the two that seem the most pertinent and the most current. They include citations to other Supreme Court prayer cases.

I've also done some informal research on UK practices going back a half century. There is no record of starting UK events (commencements, freshman orientations, major public lectures) with a prayer or moment of silence. I think we would be breaking new ground here if we approved the request. Don't let a few right-wing religious nut jobs change sound and constitutional UK practice. Let me know if I can be of further help.

LEE v. WEISMAN, 505 U.S. 577 (1992)

JUSTICE KENNEDY delivered the opinion of the Court.

School principals in the public school system of the city of Providence, Rhode Island, are permitted to invite members of the clergy to offer invocation and benediction prayers as part of the formal graduation ceremonies for middle schools and for high schools. The question before us is whether including clerical members who offer prayers as part of the official school graduation ceremony is consistent with the Religion Clauses of the First Amendment [“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”] provisions the Fourteenth Amendment makes applicable with full force to the States and their school districts.

[Nathan Bishop Middle School Principal Robert E. Lee invited a local rabbi to deliver a prayer at the Middle School graduation. Fourteen-year-old graduate Deborah Weisman and her father objected to the prayer and sought a permanent injunction that would bar such prayers in the future, including at Deborah’s anticipated later graduation from a Providence public high school.

Rabbi Gutterman’s invocation said: “God of the Free, Hope of the Brave: For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.

For the liberty of America, we thank You. May these new graduates grow up to guard it.

For the political process of America in which all its citizens may participate, for its court system where all may see justice, we thank You. May those we honor this morning always turn to it in trust.

For the destiny of America, we thank You. May the graduates of Nathan Bishop Middle School so live that they might help to share it.

May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.”]

The school board . . . argued that these short prayers and others like them at graduation exercises are of profound meaning to many students and parents throughout this country who consider that due respect and acknowledgment for divine guidance and for the deepest spiritual aspirations of our people ought to be expressed at an event as important in life as a graduation. . . .

Prayer at the Athletic Banquet

9

The District Court held that petitioners' practice of including invocations and benedictions in public school graduations violated the Establishment Clause of the First Amendment, and it enjoined petitioners from continuing the practice. . . . On appeal the United States Court of Appeals for the First Circuit affirmed. . . .

[T]he controlling precedents as they related to prayer and religious exercise in primary and secondary public schools compel the holding here that the policy of the city of Providence is an unconstitutional one. . . . It is beyond dispute that, at a minimum, 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 State's involvement in the school prayers challenged today violates these central principles.

That involvement is as troubling as it is undeniable. 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 potential for divisiveness is of particular relevance here though, because it centers around an overt religious exercise in a secondary school environment where . . . subtle coercive pressures exist and where the student had no real alternative which would have allowed her to avoid the fact or appearance of participation.

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 controlled the content of the prayers. . . . 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. . . .

The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed

by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission. . . .

Our decisions in *Engel v. Vitale* [370 U.S. 421 (1962)] [forbidding a State Regent's prayer in public school] and *School Dist. of Abington v. Schempp*, 374 U.S. 203 (1963) [forbidding mandated reading from the Bible or recitation of the Lord's Prayer or both] recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there . . . What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy. . . . The undeniable fact is that the school district's supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group, or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion. . . .

We do not address whether that choice is acceptable if the affected citizens are mature adults, but we think the State may not, consistent with the Establishment Clause, place primary and secondary school children in this position. Research in psychology supports the common assumption that adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention. . . . And to say a teenage student has a real choice not to attend her high school graduation is formalistic in the extreme. True, Deborah could elect not to attend commencement without renouncing her diploma; but we shall not allow the case to turn on this point. Everyone knows that in our society and in our culture high school graduation is one of life's most significant occasions. . . . The Constitution forbids the State to exact religious conformity from a student as the price of attending her own high school graduation. This is the calculus the Constitution commands. . . .

The sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where, as we have found,