

1. Ellery's Protest

Ellery^t Frank Schempp closed the door of his house behind him at ten minutes before eight in the morning and felt the chill November air on his cheeks. The date was November 26, 1956, a Monday, and high school was resuming after a long Thanksgiving weekend. Ellery felt a little different this morning, a little nervous. He fingered his leather binder, zippered up with a notebook and a few books inside. They were a substantial weight to carry every day, but now the weight itself was a little reassuring, a little steadying. Usually he took only textbooks between home and school. Today, though, he also had a book that he had borrowed over the weekend from the father of a friend. It was the Koran, the holy book of Islam. It made his heart race a little to think of what he planned to do with it in school.

His plans for the beginning of the day in his homeroom class would surely cause a stir—he was quite certain of that. But he didn't know exactly what the trouble would be. What could the teachers and administrators do to him, anyway? He wasn't a troublemaker. He was an A student enrolled in all the advanced college preparatory classes in the eleventh grade.

Since second grade, Ellery had lived with his parents and two siblings in a white stucco cape-style house at 2457 Susquehanna Road in the Roslyn section of Abington Township, a suburb north of Philadelphia. Situated perpendicular to Susquehanna, the house presented a rather stark silhouette to the street, with no shutters on the windows and no dormers on the second floor. There was no sidewalk in front of the house, and no curb lined the street. The roof was con-

structed of aluminum sheeting. It looked like a house built in a big hurry, with much that might soften its appearance left to do later but never done.

Ellery's younger brother and sister were still at home preparing for their day in junior high school. It had been a relaxing enough weekend, with lots of family time and a Thanksgiving turkey at Grandmother's house. This four-day holiday was a much-needed break after a long stretch of school. Sixteen years old and nearing the halfway point of his junior year, Ellery had to think not only of school but also of the college applications that would be coming up soon. Neither of his parents had studied beyond high school, and the knowledge that he would surely be heading off to a top-flight university gave him feelings of both accomplishment and anticipation.

He walked down Susquehanna Road. Traffic was busy already on the road that separated his house from a cemetery of rolling hills across the street. Here in Abington Township, the estates and farmland were falling fast to developers, who carved them into small plots and quickly threw up houses for middle-class families, like his own, that wanted to escape the city for some room to breathe. Just this year, about a mile and a quarter from the Schempp house, the township had opened a sprawling new high school to accommodate all the children who arrived traveling with their parents in Chevys and Dodges up the Old York Road into town.

He enjoyed the brisk fifteen-minute walk to school, which took him east on Susquehanna, over railroad tracks, and through a field to the front entrance. When the air was bitter enough—that would happen in another month—his damp hair would freeze and stiffen by the time he entered the high school lobby. Built on a hill at the end of a long and steep driveway, the new school was nicely appointed with some of the niftiest technology of the 1950s. A public address system enabled administrators to reach all the classrooms in the school at once with announcements, and the school even boasted a media center for students interested in radio and television production. But for all the advantages brought by a new facility, the

school still greeted students with standard-issue cinder block walls and linoleum tiles, a design meant to deny the scuffs and markings that record the passage of human activity. Ellery thought that perhaps that was the point. A scuff mark is evidence that an individual has passed by, and in Ellery's judgment, the notion of an individual making his or her mark outside of the accepted social covenants of the school merited no celebration at Abington Senior High School. In the conformist fifties, all of the pressure at school—from students, from teachers, from administrators—was to swim entirely within the lane of the pool that the powers that be had assigned.

Ellery, however, was not in the mood to conform. He came to school that day with an idea to express. He was unhappy that each school day started with a reading of ten verses from the King James Version of the Protestant Bible, followed by recitation of the Lord's Prayer. Ellery was himself a Protestant, though from the Unitarian denomination, which is relatively liberal theologically. But the King James Version expressed religious lessons that Ellery and his family did not accept, and Ellery's understanding of the First Amendment of the U.S. Constitution led him to conclude that the religious ceremony imposed by the state of Pennsylvania through the Abington public schools violated his rights to religious freedom. So on this day, Ellery planned to protest in the most effective way he knew—by using the morning devotionals to read the holy book from a different religious tradition.

The corridors were busy with students hustling to their rooms. Up the stairway he went to the second floor, and then down the hallway to Elmer Carroll's homeroom class. Homeroom is where the school day started, with about fifteen minutes filled with administrative details, the morning devotionals, and the Pledge of Allegiance. As was his usual custom, Carroll took attendance and then asked the students to clear their desks. For once, Ellery did not comply. The public address system came to life with a few bars of music. Then, as he heard a student's voice begin reciting a verse from the Bible, he opened up his Koran and began reading silently. Ellery Frank

Schempp didn't know it at the time, but he had just started his journey that chilly November morning to the Supreme Court of the United States.²



Ellery finally arrived at the door of the Supreme Court early in 1963. In its ruling, the Court supported his view that Bible reading and recitation of the Lord's Prayer in Abington Senior High and in other public schools throughout the United States violated the First Amendment's guarantee of religious freedom.³ But that, in a sense, only begins the story.

The *Schempp* decision inflamed passions in 1963 and still does so today. Virtually all of the Court's opinions, even ones that were controversial at the time they were decided, eventually become woven into the fabric of American life. The *Schempp* decision has proved otherwise. Perhaps it was inevitable that the decision would not age well, since it involved two of the things Americans are most passionate about: their religious beliefs and the education of their children. But *Schempp* has become one of the decisions most often cited by political conservatives and the religious Right as an example of the activist legacy of the Warren Court and as a decision that warrants reversal either by the Court itself or by constitutional amendment. It has remained a target of Christian conservatives and many politicians who have argued that America's public schools have become havens of secularism.

History, though, does not support the constant rhetoric that the Supreme Court tossed God out of the public schools. In fact, as the story told in this book makes clear, the American people themselves accomplished most of that through voluntary agreement among themselves. Schools in the American colonies began as private institutions whose mission was to teach children to read so that they could study Scripture. That mission worked well enough in colonies that boasted mostly homogeneous populations of Anglicans and Congregationalists. Children spent most of their day in essentially

religious learning, as teachers drilled them in prayer and in the catechism, the Bible, and the Ten Commandments. They used readers and textbooks dominated by religious references, and often their teachers were ministers.

The nation's growing religious diversity changed all of that in a gradual process that stretched over several centuries. A religious curriculum could not last for long under the stress of an increasingly pluralistic nation and the conversion of the schools into public institutions. The Anglican and Congregationalist monopolies melted away into an increasingly diverse society. Scores of new Protestant denominations flourished in the United States—Baptists and Methodists and Presbyterians and others—the result both of immigration and of the spontaneous splintering of existing churches into wholly new ones. Unable anymore to teach the dogma of any one denomination, Protestants settled among themselves on a common public school that taught a common Protestantism, centered on Bible reading and recitation of the Lord's Prayer.

Even that compromise was doomed to collapse, as the ships docking on American shores brought Roman Catholics, Jews, and eventually millions more people of non-Christian persuasions. Riots in Philadelphia heralded religious strife in many large cities, as Catholics rebelled against the exposure of their children to the Protestant King James Bible. Many school systems dropped their Protestantism so that people of diverse backgrounds could live together without conflict, and others compromised by allowing religious minorities to excuse their children from participation. Americans themselves negotiated an end of most religion in the public schools because they wanted to do so. They judged that living peacefully with their neighbors was important and that what religion they removed from the schools could be taught at home and in houses of worship. By the early 1960s, what religious practices in the schools were left for the Supreme Court to consider? Many schools still held holiday celebrations. But the most significant remnant of the past, by then practiced in less than half the public schools in the country, was a five-minute devotional exercise at the beginning of the school

day—readings from the Protestant King James Bible and recitation of the Lord's Prayer.

The choice of which Bible and which prayers to use in the public schools involved government in the kind of sectarian conflict that the framers of the First Amendment wished to avoid. Although it was a distant cousin to the sectarian bloodletting in Europe over more than a millennium, Americans suffered more than a century of riots, prejudice, and persecution relating to the choice of religious material in the public schools. Whose version of the Bible should be read? Whose prayers should be recited? If it was school boards and principals making the choice for public school pupils, then the government was in fact endorsing one tradition over another and forcing children of minority religions to either join in the majority's devotionals or find the strength—unusual in a schoolchild—to resist the gravitational force of peer pressure. The conservative justice Felix Frankfurter, concurring in *McCullum v. Board of Education*, wrote that any devotional activity that “sharpens the consciousness of religious differences” among children in the public schools causes “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.”⁴

An important fact seems lost in the history of the last half century. *Schempp* was not a difficult decision—at least not among the eight justices who voted to ban Bible reading and prayer as a violation of the First Amendment. Among them were three of the four conservative justices then sitting on the Court—John Harlan, Tom Clark, and Byron White. Clark, a Democrat from Texas who served as U.S. attorney general under President Truman, was the author of the Court's opinion. Justice Harlan, a conservative intellectual leader on the Court for many years, voted to take prayer and Bible reading out of the schools. His personal notes, on file at the Library of Congress, indicate his strong support of the decision. Harlan even joined a concurrence by Arthur Goldberg, a liberal, in which the two of them said that the government had involved itself in divisive sectarian

practices. In that judgment, Harlan was following the precedent of leading conservatives before him, such as Felix Frankfurter and Robert Jackson, both of whom strongly endorsed separation of church and state in earlier cases.

All of these justices, in the decades leading up to and including *Schempp*, recognized the dangers of excessive religious zeal in the most religiously diverse nation on earth, one that had dedicated itself to respecting each individual's freedom of conscience. As a matter of law, however, none of the justices could act until plaintiffs brought cases before them, braving anger and retaliations within their own community. Ellery Frank Schempp, sixteen years old, was one of those plaintiffs.