12. The Race to the Supreme Court

Less than a month after Leo Pfeffer appeared in Judge Biggs’s courtroom to assist Henry Sawyer in his oral argument in the *Schempp* case, Pfeffer’s patience was finally rewarded. He had never liked the *Schempp* or *Engel* cases and in fact had advised against bringing those cases from the very beginning. Now he heard of a situation that he felt was much more compelling, involving religion in the public schools of Miami.

Students at a Miami Beach public school had gathered in their homerooms early one morning to participate in their usual opening exercises. In accordance with Florida law, the students listened to a few verses from the Bible each day over the public address system, followed by their recitation in unison of the Lord’s Prayer. Then came the Pledge of Allegiance and a kind of inspirational message delivered by one of the students. But this particular morning would be different—much different.

On this day, the public address system crackled with a fire-and-brimstone sermon by a fundamentalist clergyman. The students, many of whom were Jewish, had to accept Christ, he said. If they didn’t, they would suffer damnation forever in hell. Parents of minority religions had put up with many different kinds of religious observances in the school system over the years, but the threat of eternal damnation aimed at their children was more than some of them could easily ignore. An atheist named Harlow Chamberlin decided to sue the Dade County Board of Public Instruction, which ran the Miami and Miami Beach public schools, arguing that his and his child’s rights to religious freedom were being violated.
Pfeffer apparently received his first notice of an impending legal action through a memorandum written to him on April 3, 1959, by Haskell L. Lazere, head of the American Jewish Congress’s regional office in Miami. A few weeks later, Chamberlin’s attorney, Herbert L. Heiken of Miami, wrote to Pfeffer to say that he was planning to file suit with the backing of the local chapter of the ACLU. He asked for Pfeffer’s help. With this letter, Pfeffer understood that—unlike *Schempp* and other cases about which he was so dubious—this case involved a broad array of religious practices. Heiken said that the lawsuit would demand that the school board “stop the following practices: the recitation of prayers in the morning, before lunch, and at every school assembly; the celebration of Christmas, Hanukah and Easter at school assemblies and in the classrooms; sectarian comment by teachers when reading the bible to the class every morning; releasing of school facilities for bible classes; requiring an oath of belief in God from those seeking to teach in the public schools; and by at least tacit approval, granting permission to different religious groups for the distribution of their literature in our public schools.” Heiken concluded, “As you can see, this is what may be called the ‘shotgun’ approach which we will be taking.”

Pfeffer saw this as nearly a perfect case. It involved more than the limited Bible reading and Lord’s Prayer of *Schempp* and more than a tepid state-composed prayer, as in *Engel*. Here, the extensive nature of the religious practices in the public schools would make the case much more compelling for what Pfeffer feared would be skeptical justices on the U.S. Supreme Court. In his mind, all these religious activities in the public schools certainly amounted to an establishment of religion. The required participation of students in so many sectarian activities was strong evidence as well of a violation of the free exercise clause—if Jewish students and others were required to engage in Christian prayer, Bible readings, and religious holiday celebrations, they were denied the right to freely exercise their own beliefs. The extensive nature of the violation would be hard to ignore, Pfeffer believed. So Pfeffer replied two days later to praise the
“shotgun” approach of attacking many religious practices in the schools at once.4

In the first week of May, Pfeffer went to Miami for a series of meetings that included intensive discussions of the situation in the schools. He met with Heiken there on May 4 and offered to draft the initial complaint to start the case, which they decided would be filed in a Florida state court. Two days later, Pfeffer met with the Rabbinical Association of Greater Miami and told them of the impending Chamberlin case. According to Haskell Lazere, Pfeffer, anticipating a public backlash from Christians once the case reached the court, “emphasized the need for creating a sympathetic climate of opinion re the Chamberlin action” and “urged the rabbis to begin giving sermons and holding community meetings in regard to religion in the schools.”5

The Chamberlin matter began moving quickly through the spring and early summer, with Pfeffer considering filing an additional lawsuit on behalf of a group of Jewish parents. Both of the AJ Congress’s sister organizations, the American Jewish Committee and the Anti-Defamation League, opposed the filing of the Chamberlin case and a second one involving Jewish plaintiffs. Aside from the problem of relations with the Christian community, the two groups “felt that the nature and composition of the U.S. Supreme Court at this time would make a victory unlikely.” Instead, both groups proposed meeting with the school board to negotiate an end to the religious practices. Pfeffer thought that strategy futile but agreed to hold off on the litigation for six weeks while the two sides met.6

When the talks went nowhere, the legal struggle commenced. The ACLU filed suit on behalf of Chamberlin. Meanwhile, another group of litigants had emerged. A group of Jewish parents led by Edward Resnick—unconvinced that Chamberlin, an atheist, would adequately represent their interests—agreed to sue the school board on behalf of themselves and their children. Pfeffer and a local attorney, Bernard Mandler, agreed to represent them with the backing of the AJ Congress, and Mandler filed suit in September. Courts often
consolidate cases that raise similar issues as a matter of conserving judicial resources, but this was not something that either the ACLU or Pfeffer favored. Lazere wrote on September 8 that they were “against consolidating the cases if we can avoid it,” under the argument that “if we don’t consolidate we will have a chance for two bites at the apple instead of just one.” Nonetheless, the two cases were consolidated into one as they moved into litigation. Lazere also reported that the superintendent of the Dade County schools, Joe Hall, had told a meeting of school principals that losing the case would, as Lazere paraphrased it, “mean the destruction of the whole moral fiber of the school program.” He added, “[I]n taking this action Hall has precipitated what may very well be a community-wide campaign against the Chamberlin action and ours.”

Indeed, the Miami community began to mobilize. A group of ministers succeeded in adding themselves as defendants in the lawsuits, probably concerned that the schools might capitulate in the face of the legal battle. Meanwhile, the two recalcitrant Jewish organizations closed ranks behind Pfeffer. They supported the lawsuits now because, according to Lazere, “it is a fait accompli and every effort must be lent to assure its success.”

The battle of Miami was joined. Pfeffer finally had the case he had been waiting for—the chance for a broad assault on a wide range of religious practices in the schools. This, he believed, was the strongest case to take before the justices in Washington, the ultimate audience for the arguments he had made in his major work Church, State, and Freedom.

Meanwhile, on Long Island, Judge Meyer handed down his opinion in Engel v. Vitale on August 24, 1959. The school district won nearly a complete victory in its defense of the Regent’s Prayer. Meyer ruled that such a practice did not violate either the New York State Constitution or the U.S. Constitution. But he did make clear that the prayer had to be noncompulsory, and he required that the school
board develop a formal procedure for excusing children from participating. With that provision in place, he said, “legislative permission for the noncompulsory public recital of prayer cannot be said to be repugnant to the conscience of mankind.”\textsuperscript{10} William Butler, Steven Engel’s attorney, had lost round one of Engel. Regardless of the outcome in the lower court, however, he knew the case was headed much higher—certainly to New York’s highest court, possibly to the U.S. Supreme Court.

The lawsuits in Miami, Philadelphia, and Long Island all challenged devotional exercises in the public schools, and there was still a fourth lawsuit on this subject to come. All of them would compete to be first to reach the U.S. Supreme Court. The fourth litigant, Madalyn Murray O’Hair, moved to Baltimore from Houston early in 1952, and it’s fair to say that neither Murray nor Baltimore were ever quite the same after.\textsuperscript{11} She brought with her a commitment to atheism, a penchant for activism and confrontation, and a young son who was, along with her, willing to tolerate a severe reaction in the community in order to challenge Bible reading and prayer in the public schools. In 1964, Life magazine published a profile of Murray in which it called her, in the headline of the story, “the most hated woman in America.”\textsuperscript{12}

Madalyn Mays was born on April 13, 1919, in a suburb of Pittsburgh. Her father was Presbyterian and her mother Lutheran. She was baptized in a Presbyterian church and attended religious school there on Sundays. How she came to reject religion is unclear. In his biography of her, Brian Le Beau recounts the story that Madalyn, at the age of twelve or thirteen, read the entire Bible in one weekend and found the content so unrelentingly brutal and repugnant that she refused after that to go to church services or to Sunday school. But Madalyn wrote elsewhere that her embrace of atheism took place more gradually. She maintained that upon graduating high school, she had stated that her goal was to serve God.\textsuperscript{13}
However her turning away from religion took place, Madalyn rejected the conventional values of society early in her life. She dropped out of the University of Pittsburgh and, in 1941, at the age of twenty-two, eloped with a steelworker named John Henry Roths. Their life together lasted only a few months before World War II split them apart. Roths went to the Pacific as a marine, while Madalyn enlisted in the Women’s Auxiliary Army Corps and went to North Africa and Europe. She took up a relationship in Italy with William Murray, Jr., an officer, and together they conceived a child. When she returned to the United States, her husband, Roths, offered to remain married and help raise the child, but Madalyn decided to divorce him. Although she never married Murray, she nonetheless named her infant William J. Murray III when he was born, in 1946. Later, she dropped her maiden name in favor of Madalyn Murray.14

In 1952, Murray finished a law degree at South Texas College of Law. But apparently she either never took the bar exam or did not pass it. In the crass and exaggerated language that became her hallmark, Murray boasted to *Life* magazine in 1964 about what her education meant: “Everything I learn makes me realize I don’t know a thing. But compared to most cud-chewing, small-talking stupid American women, I’m a brain. We might as well admit it, I’m a genius.”15

What Murray was without question was a person who found trouble with the reliability of a compass pointing north. When Murray moved to Baltimore with her parents and son in 1952, she started what became a long career of activism. She joined the Americans for Democratic Action but quit in favor of much more radical politics, attending Socialist Labor Party meetings in the mid-1950s, even as McCarthyism continued its destructive path through American society. Meanwhile, she met a man from New York City, Michael Fiorillo, and gave birth to their child, Jon Garth Murray, on November 16, 1954. She never married Fiorillo. Although by now an atheist, she baptized Bill Murray a Presbyterian and Jon a Methodist, apparently to appease her parents, in whose house she continued to live.16
As her role in radical politics deepened, Murray explained in her diary how she saw her place in society: “I can see my role. I’m pleased with it. So, I’m an outsider. What better is there to be? I’m a dissenter. I’m a critic and there is always a need for them. I think I see the outline of our future here in America and me in a barbed wire enclosure with my ilk as a political renegade. At least I’ll have a planned future.” Making her affiliations ever more radical, she dropped the Socialist Labor Party and joined the Socialist Workers Party. Involvement with a pro-Castro group came next, along with an application for Soviet citizenship in 1959. When she did not receive a response on her request, she and her son William went to the Soviet Embassy in Washington, D.C., in the summer of 1960, but still no answer to her application for citizenship was forthcoming.

Meanwhile, William had been enrolled in a private school. When the school switched locations and the commute from home to classroom became too difficult, Murray switched William to the local public school, Woodbourne Junior High, early in 1960. William had already been subject to religious observance in the schools, recalling from as early as second grade that a teacher read verses from a Bible in the morning and that he and all his classmates then bowed their head and recited the Lord’s Prayer. But he had never talked about the practice with his mother, who apparently remained unaware of it—at least until she took Bill, then thirteen years old, to Woodbourne on his first day of school there.

Woodbourne was a two-story school of red brick and white trim. When mother and son entered through a side door shortly after 9 a.m., they walked down long corridors and past open classroom doors, where the students and teachers were holding their short homeroom. “As we passed one open classroom door after another,” Madalyn recalled in *An Atheist Epic*, “we heard the recitation, in unison, of the Lord’s Prayer. We were caught up in a moment that transcended time, and we seemed to walk forever hearing only the waves of prayer from medieval ages of man, and the steady, even-paced click of our leather heels on the tiled floors as we walked down
another and yet another corridor.”19 Madalyn and Bill’s recollection of what happened next differs. What they do agree on is that Madalyn’s anger about hearing prayer in the schools led to a confrontation.

Madalyn recalled that she and Bill entered the principal’s office to complete the paperwork necessary for transferring Bill from the private school to Woodbourne. According to her account, when that business was done and Madalyn was walking to the door, she turned to the principal and inquired about the Lord’s Prayer, saying: “It’s quite inappropriate. I want to register my opposition to it.” Madalyn remembered that unpleasant words followed and that she then left.20

Bill’s version, recounted in his book *My Life Without God*, was that the two of them saw the school’s counselor, not the principal. He remembered that Madalyn and the counselor engaged in an increasingly heated discussion about the Lord’s Prayer, with Madalyn becoming “so furious she had nearly turned purple.” Bill recalled that as they were leaving the office, his mother said, “This won’t be the last time you hear from me about your g—— prayers in this school.” The counselor suggested that Madalyn enroll Bill elsewhere. “It doesn’t matter where I put him,” Madalyn replied. “You people have to be stopped.” Exasperated, the counselor said, “Then why don’t you sue us?”21 It was, as it turned out, an invitation that Madalyn could not refuse.