It was no mystery why Leo Pfeffer felt drawn to the *Chamberlin* case in Florida’s Dade County. He thought it was a nearly perfect test case to attack religious practices in the public schools. Pfeffer had never much liked the *Schempp* case, confined as it was to Bible reading and the Lord’s Prayer and involving only a Unitarian family. It would be preferable, Pfeffer reasoned, to litigate a case that would present the Supreme Court justices (and he did expect to go to Washington with the *Chamberlin* case) with a much broader array of religious practices in the schools. He was now effectively in control of the two consolidated cases, *Chamberlin* and *Resnick*, which went forward under the lead name, *Chamberlin*.

Pfeffer was convinced that what went on in the Dade County schools would be difficult for the justices to ignore. The public schools sponsored devotional exercises that Pfeffer thought would surely run afoul of the establishment clause, which prohibited any state endorsement of religion. Pfeffer thought that the broad array of religious practices—prayer, Bible reading, sectarian holiday celebrations, Easter crucifixion plays, and representations of Jesus—surely violated the free exercise clause as well. All those practices, Pfeffer believed, put many children in the position of having to observe the religious beliefs of others, thus encroaching on their constitutional right to freely exercise their own religion.

Pfeffer knew that with other cases also winding their way through courts in other parts of the country, it would be a horse race to reach the Supreme Court first. As much as he wanted to argue the case that
would make new law, Pfeffer also felt committed to compiling an exhaustive trial record that would record all the religious practices in the Dade County public schools in detail. He wanted to impress on the court the extent to which the state of Florida had used its public schools to teach and support religious practices that more properly belonged in the home and in houses of worship. He wanted the testimony of students and parents in order to educate judges in how religious observances affected students who practiced a minority religion or no religion at all.

No practice in the schools was more shocking than the crucifixion plays acted in schoolwide assemblies in the Miami junior and senior high schools at Easter. To Pfeffer, the requirement that even Jewish students watch these crucifixion plays was a particularly egregious violation of the free exercise clause. Many Christians, after all, had blamed Jews for the death of Christ, and this charge had been the source of persecution and killing of Jews for ages. Participation of Jewish children in the assembly was as cruelly insensitive to their beliefs as was possible.

As the lights dimmed in the auditorium, a spotlight illuminated a student tied to a cross on an otherwise bare stage. Two students, a boy and a girl, alternated reading passages from the New Testament describing the events surrounding the crucifixion of Christ.¹

One of the witnesses, Donald Crocker, who testified on July 20, 1960, had graduated earlier that year from Miami Edison High School. He told Judge J. Fritz Gordon that during the Easter assembly, there was a processional by a chorus, and then the program started. A male student was stretched out on a cross, arms extended, his body draped in a sheet. “The lights were focused on the boy,” said Crocker, “and then at Christ’s death there was heavy breathing from the boy, and then finally collapse, and that was the end of the program, I mean then they told everyone to go back to their rooms.”²

The next day, the judge heard the passion play confirmed in more detail by another student, Marcia Robinson. She had graduated from a different high school, Miami Senior High. Robinson had been impressed by the realism of the play—including the use of makeup
showing that the Christ figure was bleeding from where he had been “nailed” to the cross. A student portraying Mary knelt close by.³

While Easter provided the backdrop for dramatic renderings of the crucifixion of Christ, the Christmas holiday season boasted the broadest array of religious observances. Rabbis came into some of the schools for Hanukkah programs that included candle lighting and the reading of stories about Hanukkah. The most extensive religious observance in the schools, however, focused on an intensively sectarian observance of Christmas. On the instruction of their teachers, students created scenes to celebrate the holiday and placed them throughout the schools in display cases and on windows. There were crosses, Nativity scenes, depictions of Christ on the cross, and quotations from the Bible.⁴

Throughout the school district, students attended assemblies to commemorate the holiday through plays that depicted the birth of Christ. Students joined in singing Christological carols with such words as “Oh come let us adore him, Christ the Lord” and “Hark the herald angels sing, glory to the newborn King.”⁵ Nativity scenes and plays were routinely presented, along with Bible readings on the birth of Christ and movies with strong Christmas themes.⁶ In one movie, The Littlest Angel, students heard what was presented as the voice of God saying that one angel had given him a box that “pleases me most.” The voice continues: “Its contents are of the Earth and of men, and My Son is born to be King of both. I accept this gift in the name of the Child, Jesus, born of Mary, this night in Bethlehem.”⁷

At Miami Senior High School, officials printed a message on the program for the special Christmas assembly attended by all students, including non-Christians. It included this admonition: “Gifts are wonderful things to receive, but you should never forget the greatest gift of all, Jesus. On Christmas morning before opening your presents, say a small prayer to God, thanking him for your many blessings and His son.”⁸

Observances on a smaller scale took place daily throughout the year. They centered on what was known as the morning devotionals, typically a five-minute period at the beginning of the day when, as at
Abington, the students participated in prayer and Bible reading. A Florida statute required “once every school day, readings in the presence of the pupils from the Holy Bible, without sectarian comment.” In 1953, as an aid to teachers and administrators unsure of what specific readings to choose, the state’s Department of Education issued the pamphlet *Suggestions for Bible Readings in the Florida Public Schools.*

The Bible used most often in the schools was the King James Version. Despite the prohibition on sectarian comment, some teachers or outside visitors provided commentary on biblical passages. Lois Milman, who had graduated from North Miami Senior High School, remembered that a Christian religious leader had once come in and delivered a devotional that was sectarian enough to elicit comments from both students and faculty: “[H]e concluded with, ‘In Jesus Christ, Our Savior’s Name, We Pray.’” The trial record also established that a variety of religious films were shown from time to time, including several produced by a missionary organization to help explain Bible verses. After completion of the Bible reading, students typically recited the Lord’s Prayer. Although the school district denied it, the trial evidence showed that teachers sometimes engaged students in other prayers as well, with the prayers often made “in Christ’s name” or with a similar offering.

Many of Pfeffer’s witnesses, parents and students alike, said that they were offended by the religious practices in the schools and that the observances contradicted their own religious beliefs. Offensiveness to those practicing minority religions or no religion at all was to be expected, but Pfeffer added another significant twist to the testimony. Some students testified that they felt just as offended when their own religious beliefs were observed in the schools and that classrooms were an inappropriate forum for presenting lessons best left to their own home and to their house of worship.

The Florida law did not contain a provision allowing students to excuse themselves. However, throughout the hearings, Dade County school officials maintained that it was their unwritten policy that student participation in the morning devotionals and other religious
activities was voluntary. The excusal policy was important in their defense of the school district’s religious practices. Officials argued that because no student was compelled to participate, anyone who was offended did not have to be exposed to religious observances and thus had no valid basis on which to complain. On June 29, 1960—only three weeks before the trial started and apparently in anticipation of the issue—the Dade County school board adopted a resolution that put its unwritten policy into a formal public position. After stating that the Bible “be read daily without sectarian comment,” the board stated, “Any pupil shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.”

Throughout the years, the school board’s excusal policy was at best illusory. The policy was unwritten and also unannounced, which meant that some students and teachers knew about it, but many did not. Some students testified during the trial that they never heard teachers or officials talk about an excusal policy. Some students testified that they had made a request for excusal but were denied, because the teachers either did not understand the policy or simply chose not to follow it. Thomas A. Teasley, who had graduated from North Miami Senior High School, testified that his homeroom teacher had denied his request to be excused from the Christmas assemblies in 1959. On cross-examination by Edward F. Boardman, an attorney for the school board, Teasley recalled that his homeroom teacher “told me that it was not her policy or prerogative to excuse me from any religious, or from any activities, such as was concerned, for purely personal reasons.” He continued, “In other words, she told me that I would have to have another reason to be excused, such as going to a doctor or going to a dentist, or something like that.”

Teasley wouldn’t let it go; he appealed next to the school’s dean of men, Richard J. Henley, who also refused him. Boardman asked, “Now, Tom, did you tell him particularly that the reason you wanted to get released was because of your religious conscience?” Teasley responded, “I did.”

Pfeffer argued that an excusal policy, even if students and parents...
knew of its existence, was ineffective in protecting a student’s rights under the First Amendment. Excusal did not remove the element of compulsion from participation in the devotional activities. A wide range of social and psychological factors deterred students and parents from requesting excusal. Many students found it difficult to confront adult teachers or school officials to ask for what seemed to be a significant exception to rules that everyone else was following. Others felt the inevitable tug of peer pressure and did not want to be regarded as weird or different. Parents, of course, worried about the same thing. Harlow Chamberlin, one of the plaintiffs, said that he had discussed excusal with his son, then fifteen years old, and realized that excusal would not work because “it would be persecution, it would be setting him apart, he would be subject to derision by his schoolmates, he would be subject to persecution, divisiveness, and his life would be miserable.”

Another plaintiff, Philip Stern, testified that despite his opposition to the morning devotionals, he didn’t ask that his seven-year-old daughter be excused because “it would upset the child too much.”

At least one student worried that a request of this kind could ruffle teachers who were writing recommendations for college. Whether such a perception was fair or accurate is not the point; the fact is that it was a strong enough fear that it convinced the student not to ask for excusal from the religious activities. Marcia Robinson, a student from Miami Senior High School, said, “It was before I took my examinations, but we didn’t lodge the complaint, because we were afraid of what was going to happen from our teachers, and so we waited until the end of the school year.”

By their very nature, some of the religious practices were not ones that afforded any possibility of opting out. Pfeffer produced evidence that surveys of religious preference were sometimes taken in classrooms. One student, Michael M. Landis, who was entering his senior year at Palmetto Junior-Senior High School, testified that his teacher read off a list of religions and asked students to respond whether they were adherents. He recounted: “[T]he teacher said, ‘Is there any students who do not belong to a church?’ And I believe that
two students stood.” Asked if he was one of the two who stood, Landis answered, “Yes.” Later, in answer to a lawyer’s question, he said that he did not belong to any religious faith.22

To fortify the students’ religious faith, Dade County school officials permitted Gideon International to distribute copies of the New Testament to willing children.23 An administrator at one high school distributed a pamphlet to students that urged their attendance at Sunday religious school.24 Officials also permitted religious groups to use school facilities to conduct after-school Bible instruction—as long as it was voluntary and nonsectarian—and helped to promote it through announcements in the school and to parents. It wasn’t clear how Bible instruction could be nonsectarian, and school officials did not attempt to confirm how the instruction was given. One group, the Child Evangelism Fellowship, taught courses on the divinity of Christ and “the fact of the Resurrection.”25

Religious faith was important in terms of a teacher’s professional advancement in the Miami schools. People seeking a teaching position in the district had to reveal in the employment application whether they believed in God. Religious affiliation also figured into decisions on promotions. Under what was called the “career increment program,” teachers earned a rating of zero to four depending on their “cultural attitudes.” Under the category of religion, a teacher who “takes part in his own religious organizations and respects other religious beliefs” received the top rating of four. On the other end of the scale, a teacher who simply “conforms to his own religious belief” received a rating of one.26

In November, a week after the trial in Miami had concluded, Pfeffer traveled throughout the Midwest and met with educators and journalists. One of his goals was to round off the sharp edges of his attack on religious observances in the schools. A widespread perception then—and one that would continue unabated for many years—was that opponents of religious practices in the public schools wanted all
vestiges of religion removed from the classroom. Pfeffer’s actual stance was considerably more nuanced. Religious observances had to go, but academic study of religion did not. He argued that school-teachers should receive more extensive training in religion, so that they could better deal with religious differences in the classroom.

In St. Paul, Pfeffer spoke at a luncheon attended by state education personnel, discussing the difficulties that observation of religious holidays posed for children who did not share the majority religious faith in the community. In the evening, he spoke to parents of high school students. He made it clear that he did not oppose the teaching of religion as an academic subject—how religion affected history, religious influences in music, and the Bible as literature, for example—because “all these things are within the function and scope of any meaningful educational system.” He explained, “What we believe violates the Constitution is the use of the public school to promote belief instead of knowledge, and to seek to impose commitment rather than understanding.” Pfeffer was an implacable foe of any attempt to promote belief and impose commitment, and he promised a fight to the end.

When he returned from his Midwest swing, Pfeffer completed his work on the final briefs in the Miami case. He argued that the religious practices that he had documented so extensively before Judge Gordon violated the Declaration of Rights of the Florida Constitution, which prohibited preferences or financial aid to any church, sect, or sectarian institution. Pfeffer, however, focused most intensely on what he said were violations of federally protected rights. Forcing the trial judge to rule on his First Amendment claims would help provide jurisdiction for a review by the U.S. Supreme Court, which is the final authority on rights guaranteed by the U.S. Constitution. Pfeffer constructed a careful argument to convince the judge that the Dade County schools had violated each of the two religion clauses of the First Amendment. The two clauses are related but different, and a finding that the Florida statute violated either one of them would have been sufficient to have it overturned.

Pfeffer’s extensive trial record, he argued, showed that the Dade
County schools violated the establishment clause. The government was participating in and aiding religion by directing the schools to be used for a wide array of religious practices. Pfeffer reminded the judge of the long history of conflicts between Catholics and Protestants throughout the nineteenth century, largely based on each group’s refusal to accept the other’s version of the Bible. He pointed out the obvious differences between Christians and Jews over the New and Old Testaments. As for the Lord’s Prayer, recited by the children after the Bible-reading exercise, Pfeffer noted that it appears twice in the Christian New Testament, both times spoken by Jesus. It is the most important prayer for Christians, wrote Pfeffer, because “it is the only prayer that actually came from Jesus.”

Proving a violation of the establishment clause did not depend on the existence of sectarian practices, although Pfeffer believed sectarian practices made his case even stronger. Even if all religious faiths could enthusiastically agree on their children hearing some version of the Bible and reciting some version of a prayer, these practices would still offend the First Amendment. The prior cases, Pfeffer argued, made it clear that the Constitution banned the promotion of religion generally.

Pfeffer believed he had at least as strong a case that Dade County was also violating the free exercise clause of the First Amendment. The cumulative impact of Dade County’s practices, he said, was to “force persons to profess a belief or disbelief in religion” and to “punish them for entertaining or professing religious beliefs or disbelief.” Critical to a violation of the free exercise clause is a finding of compulsion—meaning, in this case, that it had to be evident that the children were forced by the schools to participate in the religious exercises against their will. Pfeffer pointed out that the school district had no formal policy on excusal until almost the eve of the trial and that teachers and administrators routinely denied requests from students that they be excused from participating.

Pointing to Justice Felix Frankfurter’s concurring opinion (joined by three other justices) in *McCollum*, Pfeffer argued that even if an excusal policy existed, true voluntariness did not, due to “psycholog
ical compulsion.”35 Frankfurter recognized that schoolchildren differ from adults in their ability to withstand the pressure of peers and others. “That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school’s domain,” said Frankfurter. “The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.”36 If he got to the U.S. Supreme Court, Pfeffer knew that the conservative Frankfurter might in fact cast a key vote. Sensitive as he was to compelled participation that violated the free exercise of religion, Frankfurter might find it hard to swallow that Jewish children were forced, on a matter “sacred to conscience,” to attend plays depicting the crucifixion of Christ.

Up the coast in Brooklyn, meanwhile, the case concerning the Regents’ Prayer took another step on its own long journey toward the U.S. Supreme Court. Back in August 1959, the trial judge, Bernard S. Meyer, had upheld the short prayer composed by the New York State Board of Regents that had been intended as a nondenominational and nonsectarian devotional to start the school day. But he had required the state to make participation in the prayer noncompulsory, and he had ordered that the schools put into place a procedure that would enable them to excuse students who objected. Now the case, Engel v. Vitale, moved to an intermediate state appeals court, which heard oral arguments and then, on October 17, 1960, affirmed the trial judge’s order. In an unsigned opinion that was just a few paragraphs long, the court simply stated that it agreed with Meyer’s views, adding no comments of its own.37

The court’s decision didn’t discourage William J. Butler, Steven Engel’s attorney. Routed in the first two skirmishes in the lower courts, Butler now took the case to the loftier battleground where it had been destined to go from the start. The highest court in New
York, the Court of Appeals, was the next stop, and it was in that court where Butler felt he had to win. He couldn’t assume that the U.S. Supreme Court would agree to hear the case, so he needed to make his arguments resonate before the state’s top judges.

While the Chamberlin, Schempp, and Engel cases proceeded on the East Coast, from Miami to New York, Madalyn Murray had become too radicalized to abide American society any longer. She decided that she and her sons, Bill and Jon, should abandon the United States for Russia. By now a member of the radical Socialist Workers Party, Murray applied for Soviet citizenship in 1959 and went to the Soviet Embassy the next year to help expedite her application. But she received no help from the bureaucrats there. Determined to find a different door that would be easier to open, Madalyn and her sons boarded the Queen Elizabeth for France at the end of August 1960. They visited the Soviet Embassy there frequently during the next month but still could not persuade anyone there to grant them Soviet citizenship. Finally, she and the two boys returned to their home in Baltimore late in September.

By then, Murray was a few weeks late in placing her children back in school. When she had focused during the spring and summer on gaining Soviet citizenship, she had left festering the issue of Bible reading and recitation of the Lord’s Prayer. Now that she was definitely staying in Baltimore, she steeled herself for a fight. As Bill resumed his studies at Woodbourne Junior High, Murray called Vernon Vavrina, the assistant superintendent for secondary schools, and told him that Bill would no longer participate in the morning religious exercises.

Vavrina stood firm. Bill would not be excused from the morning Bible reading and prayers, Vavrina told her on the phone. Although Bill did not have to say the prayer, he would have to display a respectful attitude and bow his head. The decision incensed Murray. That same day, she and Bill wrote a letter that she sent to Vav-
rina, Baltimore school superintendent George Brain, and every member of the school board. In the letter, she informed them that she refused to comply with Vavrina’s decision because it was a “flagrant violation” of the First Amendment. She announced her intention to henceforth teach William at home herself.\footnote{39}

Despite Maryland law that considered truancy a misdemeanor, Murray kept Bill home from school for a month. On October 27, the Baltimore \textit{Morning Sun} ran a front-page story with Bill’s picture. The article claimed that Murray’s action was the first protest of the Baltimore school board’s rule—enacted in 1905—that required Bible reading and recitation of the Lord’s Prayer.\footnote{40} That local article unleashed a flurry of calls from both local and national media. A local civil rights attorney, Fred Weisgal, who worked for the ACLU, called Murray and said that the ACLU had not yet determined whether to represent her. He advised that Murray had to send Bill back to school, in order to keep the matter focused on religious exercises in the public schools, not on the issue of Bill’s truancy.\footnote{41}

When Bill returned to school, his mother instructed him to make a statement to his homeroom teacher that he refused to participate in the opening exercises. But Murray maintained that the school authorities, wishing to avoid a confrontation in the classroom, locked him out of his homeroom the first morning. For the next few days, the school posted a teacher in the hallway to intercept him before the morning exercises and escort him directly to Vavrina’s office. Finally, on October 31, he eluded the teacher and slipped into his homeroom, where he objected to the Bible reading and Lord’s Prayer and then left the room.\footnote{42}

Two days later, the state of Maryland itself responded to Murray’s challenge. Thomas G. Pullen, Jr., the state superintendent of schools, had asked the state’s attorney general for a legal opinion on the Bible-reading controversy in Baltimore. C. Ferdinand Sybert replied with a legal analysis mostly favorable to the school board. The school attendance law, he said, required Bill Murray to attend school regardless of his objection to Bible reading and prayer. Bill’s only valid alternative was enrollment in private school. If he did not
attend, both Madalyn and Bill should be prosecuted for truancy, he said. Regarding the opening exercises, Sybert concluded that the First Amendment did not require that “the state need be stripped of all religious sentiment.” Bible reading and prayer did not violate Bill Murray’s religious freedom. However, the opinion did provide an escape for Madalyn and anyone else offended by the devotional exercises. Sybert ruled that devotional exercises in public schools must not involve direct compulsion to participate and that the school board must therefore amend its rule to include an excusal provision. Sybert suggested that such students could either remain silent or be excused from the exercise.\footnote{Two weeks later, on November 17, the school board accepted Sybert’s suggestion and amended the rule on devotional exercises to enable students to be excused on the written request of a parent or guardian.}

In December 1960, Madalyn Murray O’Hair and the Schempps apparently made contact for the first time. On December 4, she sent a typed letter to the Schempps inquiring about their case, which she said she hadn’t heard about until the past week. Some people, she said, had suggested that she not pursue a lawsuit herself because the Schempp case would soon go before the U.S. Supreme Court, raising similar issues. Murray asked for information that would help her decide what to do—although, as it turned out, her attorney filed her lawsuit just three days later.

In one long paragraph, she summarized her own situation in Baltimore and added that Bill, consistent with the Baltimore school board’s new excusal policy, had been permitted to sit in an empty room or to stand in the hallway during the morning Bible reading. But for Murray, that concession fell far short. “I refuse to accept this and I am demanding the complete abolition of the entire religious ritual each morning,” she said. Then she asked whether the Schempps had “the same piles of opprobrious mail that I have” and “economic pressures, and physical assault and all the other actions
that goes [sic] with this.” She lamented, “I have learned this last month how very unkind many people can be.”

The Schempps must have answered her immediately, for Murray wrote once again on December 10 and referred to the Schempps’ response. This time, sensing kindred spirits in the Schempps, she wrote much more candidly and personally of her skirmish in Baltimore and her insistence that her attorney push the case through the courts for a decision: “I am so militant my attorney threatens to lock me in his closet to cool off for a few days at a time.” She asked how the Schempp children were faring in relation to her own son: “How are you [sic] children holding up? Bill just this week found out what an excellent weapon his fellow students have in their rosaries! They are nice sharp instruments and the beads are just long enough for a good swing. Some of his teachers refuse to talk to him. The principal is campaigning for ‘psychological testing.’ The students ostracize him completely.” Murray also revealed to the Schempps that, only a few days earlier, on December 7, she had led suit in the Baltimore Superior Court. The ACLU had decided not to represent her, probably because it was pursuing the Schempp case in Philadelphia.

In a case that became known as Murray v. Curlett, Madalyn Murray sued the entire school board of the city of Baltimore and its president, John N. Curlett. In legal terms, Murray’s attorney, Leonard J. Kerpelman, filed a petition for a writ of mandamus (mandamus being Latin for “we order”). Such a writ, if the court decided to issue it, is an order from a court directing another inferior court or, in this case, a governmental officer, to perform an act the court or officer has previously refused to perform. In this instance, the school board had refused to comply with Murray’s request that it stop Bible reading and recitation of the Lord’s Prayer in the Baltimore public schools. So now she asked the court to issue a writ to the school board that would order it to rescind the rule requiring Bible reading.

Murray alleged that the school board had brought sectarian reli-
igious exercises into Baltimore’s public school classrooms and, in so doing, had violated her family’s right to freedom of religion under the First Amendment. Madalyn and her sons were atheists, and they argued that Bible reading and prayer promotes belief in God as the source of important values and “thereby renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith.” Murray also dismissed the school board’s recent amendment to the rules that permitted students to be excused from the exercises, arguing that such a request would cause her son Bill “to lose caste with his fellows, to be regarded with aversion, and to be subjected to reproach and insult.”

Reproach and insult, as it turned out, would have been mild treatment compared to what was actually happening between Bill Murray and the school’s resident bullies—and between the family and the community, for that matter. A major reason why the framers of the U.S. Constitution put religion and state in separate spheres was to avoid the sectarian conflict that attended various religious groups vying for the government to lift their beliefs above all others. It was also done to avoid the persecution that often hounded the followers of minority sects that lived outside the mainstream.

Although the sectarian bloodletting of Europe was a distant cousin of the experience on American shores, it was still true that conflicts over control of religious practices in the schools brought exactly the persecution and outcast status that the First Amendment was designed to prevent. That a government-run institution—in this case, the schools, full of impressionable children—had become a battleground of religious belief should have been evidence enough that the feared dangers were real. The torched churches in Philadelphia in 1844 and the severe animosities engendered in such places as New York and Cincinnati in the previous century had not disappeared. The Schempps and the Murray’s were simply the latest to suffer.

For the Murrays, the mail and telephone brought angry denunciations. Someone painted the word Communist in two-foot red letters near their house. Others repeatedly snapped the antennae on the
Murrays’ cars and slashed their tires. Some people shattered a few of the windows on their house. Kids in school ridiculed Bill and called him names, and he absorbed elbows, fists, and shoves in the hallways. According to Madalyn, students spit through the air slots into Bill’s locker; he came home many nights with his jacket or sweater spotted by saliva. One day, a student put a knife to his back and threatened, “you’re a dead Commie.” Outside of school, he faced assailants who sometimes beat him. “It would have been impossible for him to even think of going to a football game, having a date, going to a movie, or even walking down the street,” Madalyn wrote in An Atheist Epic. “He had a bicycle and he would try to outrace them at times,” she wrote. “Everyone knew him.”

Another time, Bill went to a local shopping center to pick up some parts for his ham radio. A group of boys accosted him there, taunting him with labels like “commie” and “atheist.” He walked away with the group in pursuit, heading toward a bus stop so that he could get back home. Coming up behind him, some of the boys hit him with belts. The scuffle continued as a bus approached, and the boys pushed him in front of it. Bill got out of the way just in time, escaped the pulls and tugs of those trying to pull him back, and scrambled onto the bus. When he got home and took off his shirt, his back had large red welts.

Harassment continued at home against the family as well. Some people got the bright idea that they could drive Madalyn crazy by disguising their identity and ordering all kinds of goods and services to be delivered to her address. As she reported, an undertaker rang her doorbell one day to pick up a dead body he had been told was there. Then, of course, a tombstone salesman followed with a call to sell her a monument. A hundred gallons of ice cream arrived on their doorstep. Subscriptions for magazines, book clubs, and record clubs came in the mail. A truck showed up with a load of lumber. The phone rang repeatedly with callers who inquired about the furniture that was advertised for sale in the newspaper. Tow trucks came for her car, and repairmen came about her television set. Some people in the community decided that if Madalyn and Bill Murray wanted
the Bible removed from the Baltimore public schools, the Murrays would pay a high price for the effort.

On January 16, 1961, almost six weeks after Madalyn Murray filed her lawsuit, John Curlett and the Baltimore school board responded. In a three-paragraph filing, Curlett simply demurred to her petition, stating that it did not state a cause of action—any valid legal or factual grounds—on which the court could conceivably grant relief. Judge J. Gilbert Prendergast of the superior court ultimately agreed with the school board.

In an unpublished opinion released on April 27, 1961, Prendergast ruled that the school board had acted within its discretion in issuing the Bible-reading rule and had not violated Bill or Madalyn’s constitutional rights of religious freedom. In the first sentence of his opinion, Prendergast referred to them as “avowed atheists,” and he made frequent additional references to their atheism throughout his opinion. Responding to Madalyn’s claim that Bible reading threatened her family’s religious liberty, he wrote, “Just how the religious liberty of a person who has no religion can be endangered is by no means made clear.”

That comment would have been unsurprising if made by neighbors talking over the backyard fence. For a judge, though, it showed a serious lack of understanding. In the few religious freedom cases decided by the U.S. Supreme Court up to that time, the justices had made it clear that the First Amendment protected believers and nonbelievers alike. The establishment clause prohibited the government from using its laws to aid any religion or all religions or to promote religious ceremony or belief. Clearly, the judge could cite no authority for his proposition that the rights of nonbelievers could not be legally affected by a religious exercise in the public schools.

Prendergast ruled that the school board had acted consistent with a Maryland statute that empowered it to select textbooks for class-
room use as long as the books contained no sectarian influences. This provision, said the judge, showed that the state legislature intended only to forbid sectarian teachings from the public schools, not religious materials in general—a policy, he claimed, that conformed with constitutional requirements. That the Bible would be regarded as a sectarian book was “a rather startling and novel thought,” Prendergast concluded. Of course, the idea that the Bible was a sectarian book was by then anything but a novel thought. Many state supreme courts had batted about that very contention for the last hundred years, and the Schempp case had brought out testimony on the same issue. (The issue is discussed more fully in chapter 10.)

Prendergast continued on. If religion were removed from the classroom, he said, only atheism would remain. In addition to promoting atheism, the plaintiffs wanted to suppress religion. “The two concepts,” he wrote, “are mutually repugnant.” Prendergast concluded that one of the nation’s principles was that “people should respect the religious view of others, not destroy them.”

Finally, Prendergast found reason to differentiate the Murray case from the Schempp decision handed down by the three-judge federal court in Philadelphia. He pointed out that the Baltimore schools allowed students to be excused from devotional exercises, whereas the Abington schools did not. If Ellery Schempp could have been excused, he said, “a different conclusion would probably have been reached.”

Prendergast’s wrong claim showed a fundamental lack of understanding of the two religion clauses. Claims under the free exercise clause do require that a person be compelled to act in violation of his belief, so an excusal provision might resolve that claim. Yet a court might still find compulsion even with the existence of an excusal provision, because schoolchildren might not be strong enough to resist peer pressure to participate. In any case, the Biggs court had also ruled that Abington had violated the establishment clause by aiding and promoting religion. An excusal provision did not remedy that problem at all.
Prendergast’s decision in favor of the Baltimore schools came just nine days after the trial court in Florida ruled in Pfeffer’s case, *Chamberlin v. Dade County*. Despite sitting through days of testimony about religious practices in the schools, Judge J. Fritz Gordon, as it turned out, wasn’t troubled in the least by the vast majority of them. He did make some gestures in Pfeffer’s direction, tossing out a few devotional exercises as violations of Chamberlin’s rights.

Judge Gordon’s decision, which he handed down on April 18, 1961, contradicted the three-judge federal panel in Philadelphia on key points, upholding the two daily practices that they had struck down. The practice of reading the Bible each morning was fine, said Gordon, as long as it was done without sectarian comment and as long as complaining children were excused. He found that the Lord’s Prayer was not sectarian. He also upheld the practices of singing religious hymns and displaying religious symbols. But he declared an end to religious observances of Christmas, Easter, and Hanukkah and to showing films with religious content. He also stopped the use of the public schools for Bible instruction at the end of the school day.56

Both sides understood that Judge Gordon’s opinion had little real importance. The case would be won or lost before judges in a court of appeals—first at the Florida Supreme Court and perhaps later at the U.S. Supreme Court itself. These courts would be more interested in the trial record than in what Judge Gordon made of it all. That’s why Pfeffer had painstakingly created about fourteen hundred pages of testimony about religious practices in the Dade County public schools.57 That record was complete, and Pfeffer had already vowed to take the case all the way to the top. “We look for an ultimate decision from the U.S. Supreme Court that would be on our side,” he said. “We expect it to be one of the important decisions in the history of religious liberty.”58