4. The Sage and the Upstart

Polier’s telephone call took Mann’s breath away. He knew Polier’s reputation—brilliant at law, but combative, obstreperous, and direct sometimes to the point of offending people. Knowing that, however, didn’t lessen the pain of hearing Polier’s denigrating remark. “I remember most clearly trying to figure out at that fairly young age—I was twenty-nine—why did these two people with whom I agreed so much disagree with me,” Mann says. “Was it me or was it them?”

Both Polier and Pfeffer were by then familiar with Mann’s work in Philadelphia on the upcoming Schempp lawsuit. Polier already knew that Mann had drafted the complaint he had just read; his testy response wasn’t so much a question about authorship as it was a contemptuous slap at Mann and the ACLU for continuing to move forward toward the filing of the lawsuit in the first place. For Pfeffer and Polier, the Schempp matter looked like a loser, and perhaps a serious loser that would damage irreparably the cause of removing religious observances from the public schools. Behind the scenes, in meetings and in telephone calls, Pfeffer, Polier, Mann, and the ACLU were locked in a battle over whether a lawsuit should be filed at all and, if one were filed, what strategy would enhance the chances of success—or at least limit the losses if the case went the other way. Pfeffer wielded no veto power over ACLU initiatives on religious freedom issues, but he did enjoy considerable influence, and he tried his best to exert it here.

In fact, Pfeffer had already been asked about the Pennsylvania law requiring Bible reading, as early as February 1956, about nine months
before Ellery Schempp staged his protest in the Abington schools. When asked about the validity of Bible reading in the Pennsylvania public schools, Pfeffer wrote that a practice of reading from the Old Testament without comment was most likely consistent with Pennsylvania law but that the addition of hymns, prayers, or other sectarian practices would probably make it illegal. That was not a startling conclusion, given the fact that the state law expressly required Bible reading and no other devotional practice. Pfeffer, however, said that it was “a more difficult question” whether Bible reading was consistent with the First Amendment and that “we do not think it advisable to litigate that issue at the present time.” Instead, he advised that “a quiet approach be made by the leaders of the Jewish community to the public school authorities urging a de-emphasis on the sectarian aspects of these activities.” If that approach didn’t resolve the problem, he recommended consideration of an appeal to the Pennsylvania education commissioner and then, lastly, a lawsuit.

When Ellery Schempp’s protest finally raised a real possibility of a lawsuit, the nation’s leading expert on church-state relations was cooperative but not at all encouraging. After Clark Byse’s vote broke the tie at the ACLU’s Philadelphia chapter in May 1957, enabling the ACLU to represent Schempp, Mann met with Pfeffer on several occasions during the summer. Mann wanted his advice, and he, Pfeffer, and Polier spoke on the phone during the fall as well.

For several reasons, Pfeffer didn’t like the Abington situation as a test case for religious practices in the schools, and he worked hard over the summer to persuade Mann to his point of view. His objections were by now familiar, having been conveyed to lawyers and litigants in other cases, including *Doremus* and *Carden*. Pfeffer thought Bible reading and recitation of the Lord’s Prayer clearly violated the First Amendment’s establishment clause, but he was not convinced the courts would agree. The Abington situation lacked the wide-ranging religious practices—including holiday observances, nativity scenes, and religious hymns—that could provide Pfeffer with the additional argument, under the free exercise clause, that non-Christians and nonbelievers were not free to practice their own religion.
Pfeffer also worried that with such a slim set of allegations in play, the Abington school district would simply admit that the devotional practices were held, avoiding the necessity of a trial that would establish a deep well of evidence and testimony. Pfeffer complained in a memorandum the following year, after the lawsuit had been filed, “The complaint in the ACLU’s case sets forth no facts requiring a trial and will probably go up on the pleadings.” Pfeffer worried that the trial court’s record going up on appeal would likely consist of nothing more than the basic complaint, answer, briefs, and judge’s opinion. He referred to another First Amendment case he had won some years earlier, saying he was “certain that we would have never won . . . if we would have gone up on the pleadings alone.”

Mann appreciated Pfeffer’s point about creating a deep trial record. Especially in such an uncharted and controversial legal area as religious practices in the schools, the slow and deliberate creation of a rich record helps to educate the trial judge as well as those who will hear the case on appeal. Mann told Pfeffer that he didn’t intend to go up on the pleadings alone and that he would produce Ellery Schempp and his family at the trial to describe their objections to the morning devotionals, as well as an expert witness to establish that the Bible and the Lord’s Prayer were sectarian religious observances. “I don’t know what further record you would want,” Mann would say years later.

If Mann and the ACLU were adamant about litigating the Abington situation, Pfeffer at least wanted the case filed in a Pennsylvania state court, not in a federal court. The choice of courts was a momentous decision in the litigation strategy for the Schempp case, for it potentially would affect not only the chances of winning but also the potential impact of the decision. Ideally, the ACLU lawyers wanted a court decision that would strike down not only the Pennsylvania Bible-reading statute but also all similar statutes nationwide. For that to happen, they needed to challenge the Pennsylvania statute.
under the First Amendment, by eventually arguing before the nine justices sitting in Washington. Only the U.S. Supreme Court interpreting the U.S. Constitution can declare the meaning of the First Amendment nationwide. Pennsylvania’s highest court cannot make national law, whether it is interpreting its own state constitution or the U.S. Constitution.

The U.S. Supreme Court normally controls its own docket, accepting for argument only a small fraction of the cases appealed to it from lower courts. Typically, that might be only 75 to 150 cases out of the thousands that lawyers file with the Supreme Court each year. But the Schempp case would enjoy a clear path to Supreme Court review if it were filed in federal court. A provision of federal law, later repealed by Congress, would have required the U.S. Supreme Court to hear the Schempp case if it was initially filed in a federal court. Under federal law at the time, any case filed in federal court that tested the validity of a state law under the U.S. Constitution would be heard not by a single trial judge, as is typical, but by a three-judge panel. The decision of the panel could then go up to the justices in Washington on a direct appeal, meaning that if one of the parties asked it to, the Court was required to hear the case.

There were ways for the Supreme Court justices to dodge making a decision on the merits even after a case was argued before them, but the chances were certainly high that they would take on the case’s central question. So if the ACLU filed the Schempp matter in federal court, it was signing on for a major decision on religious observances in the public schools that would affect the entire country. If the ACLU lawyers filed the case initially in state court and then lost in the Pennsylvania Supreme Court, the decision would affect practices only in Pennsylvania. They could assess the risks and rewards again at that time and decide whether to appeal. If they did ask the justices to review it on a writ of certiorari, the justices retained the discretion to decline the case.

Did the ACLU lawyers have the confidence to go forward in federal court? Taking that step required an assessment of risks and rewards that was difficult to make with any feeling of confidence.
After all, the U.S. Supreme Court had never considered a constitutional challenge to Bible reading in the public schools under the First Amendment. Nor had the Pennsylvania Supreme Court ever considered a similar challenge under the state constitution. Certainly, the federal courts looked more promising. Federal judges are often considered to be more sensitive to claims involving individual rights and liberties, and many observers consider most of them to be of generally higher quality than their counterparts on the state level. But the Supreme Court’s retreat only a few years earlier in the *Zorach* case was troubling, to say the least, and made it difficult to predict how the *Schempp* case might turn out.

Behind closed doors in the spring of 1957, the ACLU lawyers debated the choice of courts and whether to attack the Pennsylvania Bible-reading statute under the state constitution or the First Amendment. Three ACLU lawyers from the local chapter met in Philadelphia on May 15 to discuss the point. They considered filing in the state courts. But the next day, Spencer Coxe wrote to ACLU staff counsel Rowland Watts (who worked in the national office in New York): “One danger of this latter course is that in case we won in the state courts the issue might be decided only as regards the Pennsylvania constitution, if the state courts decide to ignore the federal constitutional question. Further research is being done by our lawyers on this question, and another meeting is scheduled for Wednesday, May 22.”

Meanwhile, Pfeffer, at the American Jewish Congress, knew exactly where he stood on the question. He wanted the case filed in the Pennsylvania courts if it was going to be filed at all, thus avoiding the near certainty of an eventual decision by the U.S. Supreme Court and, he thought, the likelihood of a disastrous loss. That strategy made sense for someone who thought that the case would most likely result in a defeat and thus wanted to limit the losses to Pennsylvania alone. “Both Shad and Leo worked very hard at trying to stop us from filing the complaint,” says Mann. “Short of stopping us from filing the complaint, they [Pfeffer and Polier] pressed very hard that if we had to file, it should be filed in the Pennsylvania state
courts and not the federal courts, so that the loss, when it would inevitably come, would perhaps be limited to Pennsylvania, and they could take another crack at the issue years later in some other state courts or the federal court. [They said that] the timing was not right to bring this case in the federal court and lose disastrously on a nationwide basis.” But Mann rejected the advice of the two men he admired so much. “I couldn’t see a clear way in the state court that I would be assured we would win,” Mann says. “The quality of the judges was not as good. The chance of getting a good judge was not great.”

On August 1, Mann wrote to Polier that the decision was firm: “There is no question but that ACLU is proceeding with the case, and the initial pleading will be filed by September.” (Mann was off by six months—the complaint was actually filed the following February.) The fact that Mann and the ACLU held to their original course—to not only file the case but to do so in federal court, with the intention of taking it to the U.S. Supreme Court—reflected not only their different assessment of the legal situation but also a somewhat different worldview. Pfeffer, once the brash young lawyer trying to move Jewish organizations into litigation, had become cautious in trying to find just the right case to litigate. Now, some of the younger activists he had spawned were moving forward aggressively, without his blessing.

“I’m sure that his being so certain that we’d lose and my being so certain that we’d win had everything to do with how old we were respectively,” says Mann. “They [Pfeffer and Polier] had been raised in the twenties and thirties. There was really very serious discrimination, societal discrimination, against Jews. Henry Ford was the primary anti-Semite in America. At the same time, he was the most trusted man in America. But at the same time, he was massively distributing the Protocols of the Elders of Zion throughout America. That kind of society, where Protestant America was the establishment and
must have appeared to them to likely remain the establishment in America for many years into the future—I could see where they would come to the conclusion that there was no chance at all, that the time had not yet come when the Supreme Court or our lower courts might declare unconstitutional statutes that required the reading of the Protestant Bible every morning in our public schools.”

Mann explains: “Leo did not realize how successful he had been in terms of development of the law. I was much more satisfied than he was that it was so.”

Mann also disagreed with Pfeffer on how broad the test case needed to be. Mann believed that they stood at least as good a chance of winning a case on Bible reading alone in the public schools as one that involved additional practices, such as hymns, Christmas trees, and holiday celebrations. “In my mind, all of those other practices in the public schools could be explained away on some basis,” says Mann. “It could be something other than religion. Music was culture. The Christmas tree was part of Americana. It did not originate as a religious symbol. People who were not religious had Christmas trees. But if you were talking about the required reading of ten verses of the King James Bible every morning in public schools, no one could ever say that that was anything but a purely religious practice, and the religious practice of only one denomination. So it seemed to me that, confronted with the issue, we would have lost all those other cases complaining about other things in the public schools, but we would surely win this case.”

Mann also felt compelled to act for young Ellery Schempp, who had impressed him by carrying out his protest in school and risking the ostracism of both teachers and fellow students. “When a guy like Ellery Schempp comes into your office and talks about what happened to him, it’s not a manufactured case as so many of these cases can be, when you’re out looking for a client,” says Mann. “Nobody was out looking for Ellery Schempp. He was looking for us. When that happens, and he feels he’s been hurt, and you look at the case and you think there’s probably no way, absent simply ducking the issue, that the courts are going to be able to avoid the unquestionably
As a new school year arrived in the fall of 1957, Ellery Schempp
returned to Abington Senior High School for his senior year. For
more than half of the previous school year (from the time of his
protest on November 26 until school ended in June 1957), Ellery had
reached a kind of détente with the Abington school authorities. Each
day, he reported to his usual homeroom class so that his teacher,
Elmer Carroll, could mark him present for the day. Then he hurried
down the long corridors to the office of his guidance counselor, Eve-
lyn W. Brehm. There, he sat for the fifteen minutes or so that it took
for the homeroom period to finish. Although he no longer had to
take part in the morning devotionals, there was no avoiding them
either. Ellery could hear the Bible recitation as it was broadcast to
the entire school over the public address system. In practical terms,
his excusal from participation in the devotionals meant little in terms
of sheltering him from the religious practices he found offensive.
Even this arrangement, however lacking in sensitivity to Ellery's
needs, would not survive into the new academic year. It's doubtful
that, during the summer, Abington officials had any idea of the legal
storm clouds gathering over the horizon. So far, no legal papers had
been filed; it had been less than four months since the ACLU voted
to represent Ellery, and Ted Mann was still going back and forth
with Leo Pfeffer about the direction of the complaint that would ini-
tiate the lawsuit. So it's likely that the school officials thought that
they had little more than a recalcitrant student on their hands as they
tried to figure out how to deal with him during the fall semester.
When Ellery returned to high school in September, a confronta-
tion was not long in coming. On Friday, September 13, Ellery told
his homeroom teacher that he wanted to be excused from the morn-
ing devotionals during his senior year. He ended up spending an hour and a half with Irvin A. Karam, the assistant principal, who told him that he could sit in the school auditorium during the homeroom class. He would hear the Bible readings there, but he would not have to participate in any formal way. By Monday, however, Karam’s position had hardened, possibly after he had spoken with his own boss, the principal, Eugene Stull. Now, according to a memorandum that Ellery wrote to record the reaction of school officials, Karam told Ellery that he “must stay in homeroom and stand and ‘show respect.’” On Wednesday, September 18, the homeroom teacher reported to Karam that Ellery wasn’t paying attention during the devotionals, so back he went to Karam. “Karam insisted it is no matter of conscience or religion, I must show respect,” Ellery wrote.

When the two met, Karam held firm. There would be no accommodation to Ellery’s views, as there had been the previous year when he was permitted to sit in the guidance counselor’s office. It was a matter of respecting a school rule obeyed by sixteen hundred other students. He had to attend the homeroom class and participate in the Bible reading and Lord’s Prayer. “They absolutely compelled me to do what I told them in good conscience I didn’t want to do, and it was a violation of my religious liberty,” says Ellery. So Ellery, who had been told that the ACLU would represent him, reluctantly agreed to return to his homeroom class each morning.

On November 21, Mann sent another draft of his complaint on to Pfeffer, for a final look. Although Pfeffer wasn’t happy with the lawsuit, the litigation was going ahead, and his practice was to help out behind the scenes to ensure that litigation had the best chance to succeed. Mann told him that the ACLU, contrary to Pfeffer’s wishes, would go forward with a lawsuit in federal court and not in the Pennsylvania state courts. The ACLU had, however, taken up Pfeffer’s suggestion to look for a Catholic and a Jewish plaintiff to add to the lawsuit. Pfeffer and Mann both felt that additional plaintiffs beyond
the Schempps would broaden and strengthen the lawsuit. The Schempps were Unitarians, and the King James Version—the Bible used in the Abington schools—was at least nominally their own. A Catholic and a Jewish plaintiff would sharpen the point that state-mandated Bible reading was a sectarian religious practice. Catholicism and Judaism each had its own Bible (the Douay Version and the Old Testament, respectively), and neither one accepted the King James Version. So plaintiffs from those faiths would be able to argue that the morning devotionals at Abington were truly alien to the most fundamental tenets of their faiths. But the ACLU failed to find anyone else to join the suit. Many Jews were concerned about an anti-Semitic backlash, and the Catholic Church hierarchy supported religious practices in the schools.

Mann also sent a copy of the draft complaint to Henry W. Sawyer III, a vice president of the ACLU’s Philadelphia chapter and head of its Freedom of Expression Committee. In a note indicating his own due diligence, Mann said that the complaint would “be reviewed by several colleagues who have had experience in suits against school boards, for the purpose of determining whether we have named all of the required defendants.” Within a month (by the end of December), however, Mann stepped aside as ACLU counsel on the case. Unlike Bernard Wolfman before him, Mann was not concerned that his Jewish faith would bring attacks from some supporters of religious practices in the public schools. Instead, Mann worried that he didn’t yet have the experience to litigate a case that would probably reach the U.S. Supreme Court. By then, Mann had been practicing law for only four years.

The logical choice to take the case was Henry Sawyer. He was yet another University of Pennsylvania Law School graduate who would figure prominently in the case. “He was,” says Spencer Coxe, who gave him the assignment, “the brightest man I’ve ever known. He had a tremendous intellect. He had a marvelous capacity for analyzing law.” Mann had similar respect for Sawyer: “He was a very fine litigator with an enormous amount of courage to undertake actions that the general population would be very unhappy about.”
Sawyer was only thirty-nine years old when the *Schempp* case came knocking, but by then he had practically lived a lifetime. He had served in two wars, five years as a lieutenant commander in the navy during World War II and then as a commander in the naval arctic expedition during the Korean War. After working in the Department of State for a few years, he returned to private law practice at a prominent Philadelphia law firm, Drinker Biddle and Reath, where he would spend the rest of his career building a reputation as one of the most skilled litigators of his generation. Most of his practice involved complex civil litigation concerning corporations, but he devoted enormous time in pro bono work for causes in which he believed.23

Although he came from a privileged background (he graduated from Chestnut Hill Academy in Philadelphia and earned two degrees at the University of Pennsylvania), Sawyer’s sympathies were for minorities whose rights had been systematically violated. That’s why he joined the ACLU and became, by the time of Ellery Schempp’s protest, a vice president of the Philadelphia chapter and chairman of the Free Expression Committee. By 1958, when the suit was filed, he had risen to president of the chapter.

Sawyer was well known in the Philadelphia legal community in the midfifties, not only for his work as a lawyer but also for the fact that he served on Philadelphia’s city council. His acceptance of the assignment as lead counsel in the *Schempp* case, however, marked his emergence on the national stage. After arguing the *Schempp* case in federal court in Philadelphia in 1958, Sawyer went to Washington a few years later to make his first appearance before the U.S. Supreme Court. Bernhard Deutch, a physics graduate student at Penn, had appeared before a subcommittee of the House Un-American Activities Committee and refused to answer a series of questions that involved informing on other people. The congressmen voted to hold him in criminal contempt. After Sawyer’s argument in *Deutch v. U.S.*, the Supreme Court reversed the conviction.24 Sawyer was back before the Court three years later to argue the *Schempp* case, then again in 1971 in another landmark church-state case, *Lemon v. Kurtz-*
Sawyer also didn’t hesitate to leave his firm’s well-appointed law offices and head for the streets during the civil rights clashes of the mid-1960s. He went to the South to defend black people who were registering to vote and others who were being prosecuted for allegedly violating a variety of local laws.

Mann was out of the impending Schempp lawsuit as ACLU legal counsel, having handed it off to Sawyer. But Mann also wore another hat, working as an officer for the local chapter of the American Jewish Congress. Although he had batted the Schempp matter back and forth with Pfeffer and Polier, he still thought it possible to enlist the AJ Congress’s help. Now that the ACLU had definitely decided to proceed in federal court, Mann thought Pfeffer might want to affiliate the AJ Congress with this cause so that he could maintain some influence. So Mann wrote to Polier in August 1957, noting that the local chapter had voted to support the litigation. “It would seem to me that we should have a voice in the direction of the suit from the very beginning,” he wrote. Not having received an answer, he followed up with Pfeffer in November. On December 27, as he put the final touches on the Schempp complaint, Mann wrote once again to Pfeffer, asking him for any legal briefs and memos that might be helpful. “Both Henry Sawyer and Wayland Elsbree consider you the foremost authority on the subject and would greatly respect any material prepared by you,” he wrote. Elsbree, an attorney, a member of the local ACLU’s Freedom of Expression Committee, and the editor of the *Legal Intelligencer* (a local legal publication), was assisting Sawyer on the case.

Finally, on March 27, more than a month after Sawyer filed the lawsuit, Pfeffer announced that the AJ Congress would not become involved in the case either by cosponsoring the suit or by submitting an amicus brief. Pfeffer conceded, “I was, however, authorized to render my personal assistance in an informal and unpublicized way if I should be so requested by the attorneys.” On April 15, Pfeffer wrote to Polier expressing his disappointment with the *Schempp* case. “I am happy,” he wrote, “to see that the gravamen of the complaint is not merely Bible reading but also recitation of the Lord’s Prayer.
Nevertheless, I still think it was a serious mistake (a) to bring this suit in the Federal courts and (b) to bring it in behalf of a Unitarian. I think it would be highly desirable if a similar suit sponsored by AJ Congress in behalf of a Jewish parent and, if possible, also a Catholic parent, could be brought in a Pennsylvania State court.”31

As 1957 ended and 1958 rolled around, the complaint that would initiate the lawsuit against the Abington school district was finally ready to go. Any evidence of Theodore Mann’s authorship of the legal papers disappeared from the final documents submitted to the court. The lawyers of record, those who signed the complaint, were Sawyer and Elsbree. Of the two, Sawyer was entirely in control of the case, formulating the litigation strategy and making all the arguments in court. In fact, many years later, participants in the case don’t remember Elsbree well, if at all.

The complaint was filed on February 14, 1958, almost fifteen months after Ellery Schempp had protested in his homeroom class. Ellery was by then finishing up his senior year, and it appeared almost certain that he would be gone from the high school before the case even reached trial. Had Ellery been the sole plaintiff, the fact of his graduation would almost certainly have caused the judge to dismiss the case for mootness. In order for a court to proceed with a case, including a challenge to the constitutionality of a state statute, there must be a controversy that affects the rights of the parties. Once Ellery graduated from Abington Senior High, the controversy as to his right to be free from religious practices in the public schools would certainly have ended, and no ruling by the court could have affected his constitutional rights or provided him with any specific relief. Thus, Ellery’s siblings became critical to the lawsuit. Donna was then in seventh grade, and Roger was in eighth, and they would remain in the Abington schools while the lawsuit slowly spun through a typical course of three to five years in the court system. So, when the papers were filed, the plaintiffs of record were Edward and
Sidney Schempp, who were suing both individually and as the parents of Ellery and his two younger siblings. The defendants named in the lawsuit were the Abington school district and several officers of the district, including the principal, Eugene Stull, and the school superintendent, O. H. English.

By carrying out the mandate of Pennsylvania’s 1949 statute requiring Bible reading, Sawyer complained, the Abington school authorities deprived Ellery and his siblings of “certain rights, privileges and immunities secured by the Constitution of the United States.” More specifically, Sawyer alleged that the school district officials “have violated and continue to violate the religious conscience and liberties” of Ellery Schempp and his siblings. Mann made the same complaint concerning the school district’s requirement that students recite the Lord’s Prayer, although no Pennsylvania law mandated this practice. As for Edward and Sidney Schempp, the complaint charged that the devotional practices “interfere with their right to give their children a religious education of their own choosing and according to their own beliefs, and that certain beliefs are fostered by such practices which are contradictory to what they have taught and intend to teach their children.”

The complaint then asked that the court declare the Pennsylvania statute and the devotional practices to be unconstitutional in violation of the Fourteenth Amendment to the U.S. Constitution. Alleging a violation of the Fourteenth Amendment was necessary because the religious freedom guarantees of the First Amendment originally applied only to actions by the federal government. It was the Fourteenth Amendment that eventually made the religion clauses applicable to Pennsylvania and the other states. Finally, the complaint asked the judges to stop the Abington schools from carrying out the religious exercises.

Once the complaint was filed in court, marshals delivered it to the individual defendants. Percival R. Rieder, an Abington lawyer who
served the school board, understood that this case involved quite a bit more than the everyday questions of contracts, wage negotiations, and other matters that engage school board counsel on a weekly basis. Before Ellery Schempp came along, a lawsuit alleging violation of First Amendment religious freedoms must have seemed to Rieder about as likely an event as the earth opening up and swallowing Abington’s new high school. But Ellery Schempp was there, and now the lawsuit was as well. Rieder, then, had to call in lawyers with the depth, experience, and resources to fight such a battle.

Rieder turned the case over to C. Brewster Rhoads, a senior partner in the old patrician Philadelphia law firm Montgomery, McCracken, Walker and Rhoads. Then sixty-five years old and nearing the end of a career of more than four decades, Rhoads not only was one of the brightest lights of the local bar but also enjoyed a national reputation. He was a graduate of the University of Pennsylvania and Harvard Law School and had been awarded four battle stars for his service abroad as a lieutenant in a field artillery unit during World War I. He had served a term as president of the Union League of Philadelphia, a private club for the city’s elite in law, business, and other fields. An Episcopalian, he had already served as chancellor of the Philadelphia Bar Association. After the Schempp case, he would become president of the state bar association.

Assisting Rhoads on the case was a younger partner, Philip H. Ward III, then thirty-seven years old. Despite the nearly thirty years that separated them, the two men had much in common. Both had graduated from the William Penn Charter School, one of the private secondary academies long known for educating the children of Philadelphia’s elite. Both were Ivy League in their undergraduate and law degrees. Ward had graduated from Princeton University and then, like Rhoads, had earned his law degree from Harvard. Also like Rhoads, Ward was a much-decorated veteran, having served in World War II as an artillery officer in the Pacific, where he was awarded the Silver Star, the Bronze Star, and the Purple Heart. Both Rhoads and Ward were Episcopalians, and both were Republicans. Ward followed his mentor to membership in the Union League of
Philadelphia and then went a step further, becoming, by the time the *Schempp* case reached the U.S. Supreme Court, chairman of the Committee of Seventy, a nonpartisan watchdog group that focused on good government issues in Philadelphia and surrounding towns.

Abington’s lawyers went to work, for every legal complaint must be met within a specified period of time by an answer, the legal document in which the defendants respond to every numbered paragraph of the complaint, either admitting or denying the facts and allegations as presented by the plaintiff. On April 25, about ten weeks after Sawyer filed the complaint, Rhoads submitted his papers for the defendants. The filings in most lawsuits reveal serious disagreement between the parties on key factual matters, and the lawyers may spend weeks at trial trying to establish a record, through witnesses and documents, that will convince the jury of facts favorable to their case. But in this case, Rhoads admitted the critical facts of the complaint but disputed the legal allegations and conclusions that Sawyer had drawn from them. Yes, Rhoads admitted on behalf of the school district, the students heard ten verses of the King James Bible read without comment each morning before the commencement of classes. Yes, after the Bible reading, the students rose from the seats and recited the Lord’s Prayer, although Rhoads said that they were not compelled to do so. Rhoads fundamentally disagreed, however, with Sawyer’s complaint on the larger issue raised by the religious observances in the Abington public schools, and it was on this larger issue that the battle was joined. To Sawyer’s charge that the Abington school district had violated the rights to religious freedom of Ellery Schempp and his siblings under the Constitution of the United States, Rhoads emphatically gave his answer: “Denied.”34