

## **PRAYER AND ATHLETICS: A LEGAL PROFILE**

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Issues of freedom of religion and separation of church and state have been greeted with differing views about what is acceptable and what is appropriate, as well as what is legal and/or ethical. The use of prayer within school athletics requires ethical considerations on the part of players, coaches, and sport managers. As Merriman (1997) stated, "Sport managers at all levels are constantly faced with decisions, the outcomes of which usually affect many people" (p. 17). When leaders are making decisions, aspects of life including value systems and principles do relate to the ethical decisions of individuals.

This holds true for issues such as team prayer and other forms of religious activity implementation within the context of sport. Religious expressions and freedoms in sport generate issues of legal concern pertaining to constitutional law, as the constitutionality of prayer implementation within school athletic competitions is at the heart of this matter. "Constitutional law refers to laws embodied in the United States Constitution" (Fried, 2000, p. 5).

Administrators have commonly shied away from the issue of prayer as it relates with sport activity. Concerns about the violation of Constitutional rights, issues of team disunity and other areas of concern have caused problems for administrators in the past. Not only have these issues caused idealistic concern, but these issues have also sparked legal concern in which administrators have found themselves to be liable and this can offer a variety of problems and issues (Berry, 2000).

In many ways, the issue of sport's combination with religion, and even more specifically the use of prayer is definitely a risk management issue. For example, denying individuals the right to pray could cause litigation. Likewise, leading a team prayer, game invocation, or other related actions could lead to litigation (Berry, 2000). Misunderstandings, emotional components, and the uncertainty of the future of the courts decisions based on sport and prayer set a foundation for a tremendous amount of uncertainty.

### **THE SANTA FE CASE**

"In the United States, many of the battles to establish the boundaries of religious influence on civil government have been fought on the playing fields and in the classrooms of public education" (Alexander & Alexander, 2000, p. 130). The rights protected by the First Amendment's protections of religion freedom, and more particularly the considerations pertaining to the Establishment Clause of the First Amendment, was addressed in *Santa Fe Independent School District v. Jane Doe, et al.* (2000).

*Santa Fe* (2000) revolved around the occurrence of pre-game prayers that were delivered over the public announcement system at high school football games. The prayer was administered by a student-elected student council chaplain. This practice was objected to by two students, one Mormon and one Catholic, as well as members of their families. The students and their mothers filed suit under the Establishment Clause provided by the First Amendment. After this complaint position was filed, the school decided to change its policy. The school opted to enact a policy in which there would be two student elections. The first election would be to determine if the students wanted to have an invocation at games. The second election was to determine, if the invocations were approved, who would be selected to deliver the prayers. Following the elections, the school district then stepped in and decided to only allow prayers that were nonsectarian and nonproselytizing. Even with the modification, the new policy was still viewed as being in violation of the First Amendment.

In deciding *Santa Fe* on Monday, June 19, 2000, the U.S. Supreme Court laid down its most definitive decision to date. The U.S. Supreme Court's decision held that public school districts are not allowed to let public, student-led prayers occur at high school games. This decision occurred in a 6-3 ruling, holding that the school district's practice of allowing student-led, student-initialized prayers violated the Establishment Clause.

The court's analysis of this matter was guided by the decision that was handed out in *Lee v. Weisman* (1992). This case stated that a graduation ceremony prayer led by a rabbi violated the Establishment Clause. It was held that the

government was not to coerce individuals to participate in or to support religion or the exercise of religion. If that were to occur it would be establishing a state religion of sorts.

The *Santa Fe* decision has been met with both support and opposition. Some see this decision as a basic legal conundrum. Some have felt that the abolishment of such prayer activity is an action that restricts people's right to freely exercise their religious beliefs. This line of thinking was expressed in Chief Justice Rehnquist's dissent of the decision. In his dissent he stated that he felt that the decision was flawed and contradictory. He stated that under the line of thinking, the singing of the national anthem would also violate the First Amendment (Colloff, 2000; *Santa Fe v. Doe*, 2000).

Additionally, the 6-3 split in the decision was illustrative of the line of division that revolves around this issue, and the interpretation of what is viewed as appropriate and what is Constitutional. Furthermore, another important issue involved in this case was the issue involving the rights provided by the Free Exercise Clause. Individuals such as Weeks (2000) viewed the ruling in the *Santa Fe* decision as being one that shuts the door on the practice of religion in the schools, a right which has been viewed as being guaranteed by the Constitution. Weeks felt that reasoning, and ultimately decisions, such as these have actually torn away religious freedom in America. Furthermore, she felt that Americans' freedom to exercise their religious beliefs has been deprived and that this deprivation was inappropriate and incorrectly measured the intent of the Constitution. This viewpoint represents the concerns that much of America feels pertaining to the opportunity to truly practice religious beliefs freely.

#### BEFORE SANTA FE

Though *Santa Fe v. Doe* (2000) set the most definitive court decision on this controversial subject, various cases have helped pave the way for the perception of the appropriateness and legality of prayer in school athletic settings and other scholastic settings. This timely issue of prayer within school settings, including athletics, received great attention through the court case of *Jager v. Douglas County School District and School Board* (1989). The background of the *Jager* case was based on the incidence where a high school band member, Jager, and his father brought forth a suit against the Douglas County (Georgia) School District and Board of Education in an effort to stop the practice of offering invocations at high school football games. These invocations commonly asked the audience to bow their heads to pray and commonly invoked the name of Jesus Christ. Jager claimed that these practices went against his Native American beliefs. As a result of Jager's opposition, he expressed concern to the school principal.

In *Jager*, the court found that the school district was in violation of the Lemon Test, by failing two parts of the Test (*Jager v. Douglas County School District and School Board*, 1989). The Lemon Test resulted from *Lemon v. Kurtzman* (1971) (which will be addressed in further detail later in this work). The Lemon Test basically established a three prong measure to look at issues pertaining to violations of the Establishment Clause. The Lemon Test has been viewed as a "litmus test" standard that looks at the following issues:

1. Is there a secular purpose to the activity?
2. Does the activity not convey an endorsement or disapproval of religion?
3. Does the activity entangle government with religion (Berry, 2000)?

By instituting this line of reasoning, the court found the school district to be in violation of endorsing and perpetuating religion. Interestingly, however, in this case, it was recognized that pre-game invocations could accomplish admirable goals such as promoting good sportsmanship; it was further pointed out that such actions could also be reached by measures that were not centered on religious references.

Through decisions such as that of *Jager*, pre-game invocations such as those administered by Protestant clergy were seen as violations of the First Amendment. In this ruling, the court left room for the opportunity for invocations that are led by individuals derived from a randomly selected position, such as student or parent to be potentially permissible. This does not fall in line with the ruling in the *Santa Fe* decision.

#### OTHER CASES

It should be noted that courts have been reluctant to rule on case matters concerning religious freedoms and separation of church and state due to the controversial and emotional nature of such issues (Dougherty, Auxter,

Goldberger, Heinzmann, & Findlay, 1994). When addressing the Constitutional concerns pertaining to the rights of freedom of religion, as granted by the First Amendment, various court decisions have helped to establish the current judicial climate of this matter.

Among the cases that have impacted the current standard are *Lee v. Weisman* (1992), *Lemon v. Kurtzman* (1971), *Doe v. Duncanville Independent School District* (1995), *Board of Education of Westside Community Schools v. Mergens* (1990), *Jones v. Clear Creek* (1992) and *ACLU of New Jersey, et al. v. Black Horse Pike Regional Board of Education, et al.* (1996). Though these are not the only cases that have had a bearing on the current status of the place of prayer within the context of school activities and more particularly in the context of school sport activities, they have displayed a powerful impact on the current status of this heavily debated matter.

In *Lee v. Weisman* (1990), the U.S. Supreme Court presided over the issue of prayer at school graduation ceremonies. This case centered on a Jewish rabbi being asked to conduct prayers at graduation ceremonies. The rabbi was given a pamphlet that included details about what was and was not acceptable according to school policies. Prior to the ceremony, a request to disallow the invocation made by a student's father was denied and the prayer was given at the ceremony. After this action, Weisman sought to have a permanent injunction of such actions. The ruling of this case stated that such practices did in fact violate the First Amendment of the Constitution (Clement, 1998). Sawyer (1997) stated that this case explained how government was not to be involved in using prayers as a means of "civic religion."

Another important case that has been influential in determining the acceptability and legality of prayer in government settings (including schools) was *Lemon v. Kurtzman* (1971). This case, although not directly related to athletics, did have an indirect effect on prayer use in school sports. It basically addressed instances where the Establishment Clause was not to be compromised in public activities. The crux of the matter was based on salary supplementation in Rhode Island private schools, particularly involving the state paying in part for the educational practices at private religious institutions. In deciding this case, the subsidies were seen as fostering in an excessive manner the entanglement of religion and state. It was seen as a violation of the Establishment Clause. This case is noted for establishing what is known as the "Lemon Test."

*Doe v. Duncanville Independent School District* (1995) involved a female student-athlete that felt she suffered repercussions as a result of her refusal to take part in prayer activity. By not participating in such prayer activity, the student claimed to have suffered ramifications such as being questioned about her actions by peers, heckled by spectators, and being called a "little atheist" by one of the school's teachers. As a result of these actions and her subsequent feelings of ridicule, Doe situation was decided by the courts in a ruling that found the school district had failed the Lemon Test by endorsing religion through employee-led prayers. However, in this case, it was ruled that the school district could not restrict players from participating in student-led, student-organized voluntary prayers (Berry, 2000).

In *Board of Education of Westside Community Schools v. Mergens* (1990), the United States Supreme Court presided over the issue of the establishment of a religious club at a Nebraska high school. School officials had denied a request by students to start up a Christian club that would have the same rights and responsibilities as other school clubs except for the lack of faculty sponsorship. The basis for this denial was the Establishment Clause and a school board policy that required faculty sponsorship of such clubs. After the decision to deny the club was upheld by the school board, a group of current and former students brought forth a suit seeking to have the right to pursue the club further. They based their argument on the Equal Access Act. Once this case reached the U.S. Supreme Court, the Court decided to affirm the earlier decision that was handed out by the appellate court, in which it was determined that the Equal Access Act was established in an effort to allow such actions as this, and that clubs such as this were not in violation of the Establishment Clause. Included in the proposed actions of this Christian club were various activities with religious connections including student-initiated prayer. In this decision, student-initiated prayer was acceptable, in the fact that the court saw that such actions were seen as private speech. However, prayer led by teachers, coaches, and administrators was deemed as being unacceptable (Clement, 1998).

In *Jones v. Clear Creek Independent School District* (1992), the issue at hand was school prayer at graduation ceremonies. In this case, some of the graduating seniors of the Clear Creek Independent School District and their parents brought forth suit to prevent the school district from allowing an invocation and benediction at graduation

ceremonies. Through this, the court decided that prayer was acceptable when it was approved by a student vote and was also nonsectarian and nonproselytizing in nature. This court also stated that school encouraged prayer at sporting events was not acceptable.

One other important case was *ACLU of New Jersey, et al. v. Black Horse Pike Regional Board of Education, et al.* (1996). The Black Horse Pike Regional Board of Education had a lengthy history of invocations and benedictions at graduation ceremonies. These messages were commonly given by local clergy. The clergy members were selected from a variety of different denominations in an effort to represent a variety of individuals. In this ruling, the court differed with an earlier decision, by finding the policy of allowing a high school senior class vote on the issue of a student-led, student-written prayer at graduation ceremonies unconstitutional.

#### GETTING AROUND THE ISSUE

Numerous schools and school districts have attempted to maneuver around decisions that have been issued through the courts such as in the *Santa Fe* and *Jager* decisions. Schools have fought decisions, ignored decisions, and tried to invoke their own policies. According to Colloff (2000), there has been a movement towards implementing prayer in the stands at football games across the South, where pre-game invocations have often been steeped in tradition. Examples of such actions have included people forming a human prayer chain on a track surrounding a football field in Tennessee, fans emptying the bleachers to take part in a prayer session on the fifty-yard line in Arkansas, and fans listening to prayers over radios (which have been brought into the stadium by spectators) in North Carolina (Roche, 2000).

#### ADDITIONAL CONSIDERATIONS

In addition to the aforementioned examples, situations, and court decisions, there is a variety of other problems, issues, and concerns that ought to be considered regarding the combination of athletics and religion, particularly prayer in athletic settings. Concern over coercion concerns and problems with potential team conflict and disunity, as well as concerns about making students feel isolated and ostracized need to be considered (Lee, 2003).

Coercion has been a major point of contention in matters such as the use of prayer in athletics. Courts have examined this issue and ruled against practices that are coercive in nature, but like many of these religious issues, coercion can be a two-edged sword. As pointed out by Stone, Seidman, Sunstein, and Tushnet (1999), coercion can be an issue of importance in settings such as courses which present materials on subjects such as evolution, which may be in direct conflict with students' religious beliefs.

Issues regarding the expression of personal freedoms and beliefs can open the door to great debate over which actions are permissible and which are not. There is a tremendous amount of gray area associated with the issue of prayer in connection with school athletics. People have had and will continue to have differing views on these matters, but the issues related to the implementation of prayer within the context of school athletics is something that athletes, administrators, and coaches need to be aware of and address when needed. This issue is not something to just merely be ignored, but rather this issue should be understood and effectively handled by all parties involved.

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